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IN THE

Supreme Court of the United States

October 1947 Term

NUMBER 727

DINSHAH P. GHADIALI
and
DINSHAH SPECTRO-CHROME INSTITUTE
Petitioners

versus

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, BRIEF IN SUPPORT OF PETITION AND MOTION TO DISPENSE WITH PRINTING OF RECORD.

DINSHAH P. GHADIALI,
Malaga, New Jersey
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TABLE OF ABBREVIATIONS

A.M.A.—American Medical Association

CORPORATION—Petitioner Dinshah Spectro-Chrome Institute.

COURT—United States District Court; Trial Court.

DEVICE—Spectro-Chrome Equipment.

Ev.—Evidence.

GHADIALI—Petitioner Dinshah P. Ghadiali.

Id.—Identification.

INDICTMENT—Indictment Number 3423c.

INSTITUTE—Dinshah Spectro-Chrome Institute.

JUDGE—Honorable U. S. District Judge Philip Forman.

ORIGINATOR—Petitioner Dinshah P. Ghadiali.

PROSECUTOR—Assistant U. S. Attorney Grover C. Richman, Jr.

RICHMAN—Assistant U. S. Attorney Grover C. Richman, Jr.

S-C. M. E.—Spectro-Chrome Metry Encyclopaedia.

Tr.—Transcript Of Proceedings And Evidence Page.

TRIAL JUDGE—Hon. U. S. D. J. Philip Forman.

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Holy Bible, Genesis, Chapter 9, Verse 13	83
The American Illustrated Medical Dictionary, By W. A. Newman Dorland, Twentieth Edition, Page 1364	48
The Law Of Expert Testimony, By Henry Wade Rogers, Third Edition, Page 367, Section 159	46
Underhill's Criminal Evidence, 4th Edition, Page 981, Section 480	77

TABLE OF REFERRED GOVERNMENT EXHIBITS

G-1 in Ev.—Certificate Of Incorporation Dinshah Spectro-Chrome Institute.
G-22 in Ev.—Spectro-Chrome Home Guide.
G-25 in Ev.—Spectro-Chrome, December 1941.
G-27 in Ev.—Request For Enrollment As Benefit Student.
G-33 in Ev.—Spectro-Chrome Home Guide.
G-34 in Ev.—Spectro-Chrome Metry Encyclopaedia, 3 Volumes.
G-34 in Ev.—Volume 1—Spectro-Chrome Metry Encyclopaedia.
G-44 in Ev.—Spectro-Chrome Home Guide.
G-91 in Ev.—Spectro-Chrome Metry Encyclopaedia, 3 Volumes.
G-209 in Ev.—Check to Spectro-Chrome Distributing Company.

TABLE OF REFERRED DEFENDANTS' EXHIBITS

D-42 in Ev.—Authentic Fire Report.
D-337 in Id.—2 Sheets, A. M. A. Journal.
D-441 to D-457 in Id., both inclusive—Newspaper Articles.
D-473 in Id.—Food And Drug Correspondence.
D-475 in Id.—Paper from Post Office Department.
D-501 in Id.—India Certificate Of Identity.
D-502 in Id.—Certificate Of Wilson College Professor.
D-503 in Id.—Certificate Of Registration.
D-505 in Id.—Certificate Of Allied Medical Associations Of America.
D-506 in Id.—Certificate Of American Association Of Progressive Medicine.
D-507 in Id.—Certificate Of American Association Of Orificial Surgeons.
D-508 in Id.—Certificate Of Maryland Academy Of Sciences.
D-516 in Id.—Rhode Island Class Photogram.

STATEMENT OF QUESTIONS INVOLVED

The following are the Questions involved, on which the Petitioners request the kind consideration of this Honorable Court:—

QUESTION 1

Can Criminal Proceedings be inaugurated by Administrator, reporting to U. S. Attorney Criminal Violation, without giving appropriate Notice to Petitioners with opportunity to present views?

QUESTION 2

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in permitting introduction of Testimony, outside of the scope of the Indictment?

QUESTION 3

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in permitting introduction of Testimony, of Medical Doctors and others in regard to an original School of Healing, of which they had admittedly no knowledge or experience?

QUESTION 4

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to permit them to show their Good Faith and Honest Motives?

QUESTION 5

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to permit the Individual Petitioner, Dinshah P. Ghadiali, to show his Qualifications, Experience and Scientific Standing?

QUESTION 6

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to permit the Individual Petitioner, Dinshah P. Ghadiali, to demonstrate Experiments in support of his Science?

QUESTION 7

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to charge the Jury, as duly requested by the Petitioners?

QUESTION 8

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in interpreting the Verdict of the Jury and making its Judgment before imposing the Sentence?

QUESTION 9

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in imposing the Sentence?

QUESTION 10

Were the Constitutional and (or) other substantial Rights of the Individual Petitioner violated, by the Trial Court, in the Probation Terms offered to him?

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UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

TO

The Honorable Justices of the Supreme Court of the United States:

May It Please Your Honors:

Now come before this Honorable Court, DINSHAH P. GHADIALI and DINSHAH SPECTRO-CHROME INSTITUTE, Petitioners, for a Writ Of Certiorari to review the Judgment of the United States Circuit Court Of Appeals for the Third Circuit, entered in the above entitled Cause, on February 9, 1948, affirming the Judgment of the United States District Court for the District of New Jersey.

SUMMARY STATEMENT OF MATTER INVOLVED

1. Petitioner Dinshah P. Ghadiali is a Parsee Zoroastrian of Bombay, India, who came to the United States Of America in 1896, lecturing on the X-Rays and other Physical Sciences. He returned and came back in 1911 and in 1917 was naturalized as a Citizen. Meanwhile, after 30 years of costly and laborious researches, he succeeded in evolving an entirely original Healing System, of remedying Human Disorders by means of Color Rays, matched to certain Oscillatory Frequencies, in accordance with certain phases of the Science of Spectroscopy. He also perfected and marketed in 1920, a Device named "SPECTRO-CHROME", for the production of the Color Rays and established a new School Of Healing chartered in New Jersey and 16 other States, under the name "Spectro-Chrome Institute."

2. Several hundred Medical Doctors, Surgeons, Osteopaths and the like, joined that Organization and after the prescribed study, graduated with the Diploma for the practice of the new Science. Their success caused its introduction into certain Hospitals also. However, in 1924, the American Medical Association began publishing in its Journal derogatory statements about the Science, its Originator and its practising Medical Doctors and Surgeons and has been continuing it to this day, **without** making any investigation about its value and merits, although requested by the Originator unconditionally and unreservedly on numerous occasions.

3. That Business Corporation, SPECTRO-CHROME INSTITUTE, was dissolved by a Unanimous Resolution of its Stockholders, on Monday, September 15, 1941 and the same day, a Non-Stock, Non-Profit, Scientific, Educational, Benevolent, Fraternal, Membership, Health Corporation was chartered under the Laws of the State

Of New Jersey, with the name DINSHAH SPECTRO-CHROME INSTITUTE. That is the present Corporate Petitioner. It excluded from its Membership ALL Practitioners of any Healing System outside of the Science of Spectro-Chrome Metry, to preserve its complete neutrality and at the same time made the Device Spectro-Chrome and its Literature accessible to and attainable solely by its Members. The Petitioners guarded the Organization by a strict Code Of By-Laws, which had no Exceptions and was accepted unanimously by the Members.

4. Nearly 4 years later, an Indictment, Number 3423c. was filed against the present Petitioners, in the U. S. District Court, in and for the District of New Jersey, on August 7, 1945, for Criminal Misdemeanor by Violation of the Food, Drug And Cosmetics Act. Both Petitioners pleaded NOT GUILTY, on August 24, 1945.

5. Motion To Quash Indictment, Motion For Restriction On Expert Testimony and Motion For Exclusion Of Evidence Unconstitutionally Procured, were filed by Petitioners on October 11, 1946. On Hearing before Honorable U. S. District Judge Philip Forman, on October 16, 1946, the First Motion was denied. Ruling on the Second Motion was held over for question to be determined during the Trial. On the Third Motion, no Ruling was made, because of the Sub Poena issued by the Prosecution about the production of certain corporate papers being withdrawn.

6. The Trial was moved before Hon. U. S. District Judge Philip Forman and Jury, on October 21, 1946, Dinshah P. Ghadiali appearing for self and the Corporation.

7. Motion For Judgment Of Acquittal orally made for both Petitioners, on November 26, 1946, after Government rested, was denied.

8. Motion For Judgment Of Acquittal orally made

for both Petitioners, on January 6, 1947, after Defense rested, was denied.

9. Motion To Dismiss 10 Counts Of The Indictment, in which the 3 Volumes of Spectro-Chrome Metry Encyclopaedia were not offered in Evidence, made for both Petitioners, on January 6, 1947, after Defense rested, was denied.

10. On January 7, 1947, Jury delivered Verdict, by finding both Petitioners GUILTY ON ALL COUNTS AS CHARGED. Motion was made by Petitioners to poll the Jury and Jury was polled.

11. Motion For Judgment Of Acquittal Or Order For New Trial, was filed on January 13, 1947 and was heard and denied on January 22, 1947. Petitioners were ordered to appear for Sentence on January 31, 1947, at 10 A. M., which they did.

12. On January 31, 1947, the Corporation was fined $1,000.00 on each of the 12 Counts.

13. Dinshah P. Ghadiali, was fined $1,000.00, on each of Counts 1, 2 and 3 and Imprisonment of 1 Year on each of those Counts, to run consecutively.

14. Execution of the Imprisonment term was suspended and the Individual Petitioner was placed on Probation for 5 years.

15. On Counts 4, 5, 6, 7 and 8, Fine of $1,000.00 on each Count was also imposed.

16. Imposition of Sentence on Counts 9, 10, 11 and 12 was suspended and the Individual Petitioner was placed on Probation for 5 years, concurrently with Probation imposed on Counts 1, 2 and 3.

17. Some of the Conditions of Probation were, that the Individual Petitioner "will generally in all respects and manner, directly or indirectly, disassociate himself from the promotion of Spectro-Chrome or Spectro-Chrome Metry, its Teachings and Literature and so forth in every

form and guise under which it might be projected; that he will dissolve the Non-Profit Corporation, Dinshah Spectro-Chrome Institute; that he will turn over all the Literature to the Government for destruction; that he will discontinue, directly or indirectly, the Service of Free Guidance and the editing of the magazine (Spectro-Chrome) and that he will at all times, at all reasonable times, freely and voluntarily open his books and his records, to the inspection of the proper Officers of the Department of the Government, in control of this matter."

18. Oral Notice Of Appeal was promptly given by the Petitioners, at the completion of the passage of the Sentence by the Court. Execution of Sentence was stayed.

19. Judgment against the Petitioners, was filed on February 3, 1947.

20. Formal Notice Of Appeal was filed by the Petitioners, on February 6, 1947.

21. Designation Of Contents Of Record On Appeal, was filed by the Petitioners, on February 19, 1947.

22. Petition For Extension Of Time For Filing Record On Appeal, filed with Trial Court and granted by it, on March 18, 1947.

23. Petition For Extension Of Time For Filing Record On Appeal, filed with the U. S. Circuit Court Of Appeals, May 6, 1947 and granted after a Hearing, on May 19, 1947.

24. Second Petition For Extension Of Time For Filing Record On Appeal, filed with the U. S. Circuit Court Of Appeals, dated August 15, 1947 and granted on September 17, 1947.

25. Petition For Extension Of Time To File Appellants' Briefs, filed with the U. S. Circuit Court, dated October 10, 1947 and granted after a Hearing on October 15, 1947, fixing the date for filing Brief Of Appellants as December 19, 1947.

26. Motion For Continuance On Oral Argument And Reply Brief, filed with the U. S. Circuit Court, January 5, 1948 and denied January 6, 1948.

27. Both Parties made their Oral Arguments, before the U. S. Circuit Court, January 6, 1948.

28. Reply Brief of Appellants, present Petitioners, filed with the Circuit Court Of Appeals, January 21, 1948.

29. Honorable Circuit Court Of Appeals filed its Order affirming Judgment of the U. S. District Court.

30. The Petitioners filed with the Circuit Court Of Appeals, Petition For Stay Of Mandate, dated February 21, 1948, to make the present Application to the Supreme Court of the United States.

31. The Petitioners filed with the Supreme Court of the United States, Petition For Extension Of Time For Filing Application For Writ Of Certiorari, February 25, 1948. It was granted the same day, extending the Time to and including April 9, 1948.

It is against the Affirmation, by the U. S. Circuit Court Of Appeals, that the Petitioners take the liberty of approaching this Honorable Supreme Court, to direct the Writ Of Certiorari for the following Reasons:—

REASON 1

The Criminal Proceedings were instituted in Violation of the dictates of the Statute.

REASON 2

The Trial Court erred, in permitting Testimony outside of the scope of the Indictment, contrary to all Rules of Criminal Evidence.

REASON 3

The Trial Court erred, in permitting Testimony of persons, other than the School Of Healing concerned,

about the Science promulgated by which new and original School, they had admittedly no knowledge, study or information and the Technique of properly using the Device, they admittedly did not know, did not use and which they ignored.

REASON 4

The Trial Court erred, in permitting the Testimony of persons, who admittedly had used Devices other than those specified in the Indictment, most of which were not made by the Corporate Petitioner and some of them not even gone into Interstate Commerce.

REASON 5

The Trial Court erred, in not permitting the Individual Petitioner, to present proofs of his Good Faith and Honest Motives, in accordance with the Rules Of Criminal Evidence.

REASON 6

The Trial Court erred, in refusing to permit the Individual Petitioner, to show his Qualifications, Experience and Scientific Standing, in accordance with the Rules Of Criminal Evidence.

REASON 7

The Trial Court erred, in not permitting the Individual Petitioner, to demonstrate and elucidate his original Science, with Experiments to support it and thereby usurping the province of the Jury.

REASON 8

The Trial Court erred, in refusing to analyze the Testimony and charge the Jury as requested by the Petitioners, in accordance with the Rules Of Criminal Evidence.

REASON 9

The Trial Court erred, in making an arbitrary and

unfounded interpretation of the Jury Verdict and announcing an unjust, unjustified Opinion, contrary to Legal Jurisprudence.

REASON 10

The Trial Court erred, in imposing Fines on the Petitioners, far in excess of the Crime charged in the Indictment, in contradiction to the United States Constitutional Amendments.

REASON 11

The Trial Court erred, in imposing Penalty of Imprisonment, on the Individual Petitioner, far in excess of the Misdemeanor Charge in the Indictment, in contradiction to the United States Constitutional Amendments.

REASON 12

The Trial Court erred, in dictating to the Individual Petitioner Probation Terms, cruel and unusual in character, besides being incapable of fulfillment and contrary to the Probation Statute as well as the United States Constitutional Amendments.

REASON 13

The United States Circuit Court Of Appeals For The Third Circuit, in rendering its Opinion, closed its eyes to all points of Law and glossed over the whole affair by merely stating "It would serve no useful purpose to discuss them in detail." The Points at Issue herein, are of vital public interest, as the Health and Welfare of thousands of sick people using the Device in question, successfully where other and old Schools Of Healing failed, are involved in this Case. The actions of the Trial Judge were in several instances at variance with the Law and there are no Decisions of the Courts to guide for the future. Hence, this Honorable Court is petitioned for the correct interpretation and settlement of the Points involved.

STATEMENT OF JURISDICTION

The Jurisdiction of this Supreme Court is invoked under Section 240 of the Judicial Code (United States Code, Title 28, Section 347). The United States Circuit Court Of Appeals, for the Third Circuit, in this Case paid no attention to important Questions involving Federal Constitutional and (or) other substantial Rights and of the construction and interpretation of Federal Statutes, but, which deserve to be settled by this Honorable Court.

OPINION OF THE TRIAL COURT

The following is the Opinion of the United States District Court, (Q-7 to Q-16):—

THE COURT: Mr. Ghadiali, you express great admiration for America and your American citizenship but you have substantially rejected the custom and general mode of life in America. You have walled yourself up in distinctive dress, a failure generally to associate yourself with the people except in certain lines. This you have done not only to yourself but you have conceived it desirable to rear and raise your family in the same way but to this no one could complain in America, which is a country for different people to live in unitedly.

However, that very isolationism of yours is characteristic of a general pattern or design in your life, as it was laid open here in the many weeks of trial, a trial that I think was in all respects in the American tradition of fairness. You represented yourself as counsel, and as far as it was possible every facility was made available to you to exploit your defense to a jury of citizens so that final judgment upon the facts and the law could eventually be made upon the charges of the government.

Your mode of living followed a pattern or design where you were the central figure of government in the

little world that you created. You made your geographical settlement, you made your laws and you made your own government, and wherever this was consistent with the laws of the United States again no complaint could be made against you; because America is just for that and we have in the country numberless groups and cults of many, many varieties. Where there is no conflict with the basic laws of the country the greatest latitude and freedom are extended to all people.

Then, many years ago, you hit upon an idea of an alleged system of healing people. It apparently consisted of a recommendation to follow a diet and of following prohibitory regulations against use of alcohol and tobacco, coupled with the distribution of a device designed to shine, as you alleged, beneficial attuned color waves upon the human body in order to cure its ills. Of course the diet and the prohibitions against the use of alcohol and tobacco, I suppose, are nearly as old as man himself except that the use of tobacco is a more modern indulgence. These were nothing new. Such instructions may well have had some benefit.

However, along with your invention of the alleged beneficial waves of color you made rather cunning use of the New Jersey Corporation laws upon which you built the so-called Dinshah Spectro-Chrome Institute. And you would have me think that a wide chasm separates you, Dinshah P. Ghadiali, from the Spectro-Chrome Institute. This can be done with the corporate laws of our state in a technical sense, but, Mr. Ghadiali, I can only feel, and I think I am justified in feeling, that only the most fragile veil separates the individual Dinshah P. Ghadiali from the so-called corporate entity.

Other shrewd implementations were contrived by you to turn this entire matter of treating people for their sick-

ness into a special group of fraternal brotherhood as you have sometimes called it yourself.

Now, it is too bad that there are not local laws that can be effectively applied in cases like this so as to avoid the huge amounts of expense that come with a federal investigation. Apparently there are not any in existence in this state and the federal government, as may easily be inferred from the amount of work that was done by it in this case, must have expended time and money without stint over a long period of years in order to perfect a prosecution that was so efficiently evolved and as expertly and finely exploited in this court room. This was one of the best prepared and best tried criminal cases, fair and at the same time exposive of all detail, that has been brought on before me or during my incumbency as judge of this court, or as United States Attorney of this district, and thoroughly has justified what I apprehend must have been the hundreds of thousands of dollars that it cost the United States government.

You say that I am, or you imply that I am confined in this matter of sentence to the narrow margin delineated by the indictment. That is not so. On sentence a court may look back of the indictment. Indeed, it is the duty of the court to follow the verdict of the jury where the court has no quarrel with that verdict and to attempt in so far as it is within its power to cause a cessation, once and for all, if possible of the transgression, that the fact finding body with the proper application of law has found to exist against the laws of the country. Basically, those laws are designed for the protection of the public. The jury has found in effect that the public in this case has been exposed to danger by forces put forth by the defendants.

I conceive it now to be my duty to carry out that jury verdict, not with the idea of vindictiveness or retribution because that is not in the area of what one human being

or a society of human beings should do to another human being, but very, very emphatically is it my duty to implement that decision of the jury so as bring to a stop the evil suggested in the verdict. There is evil in this thing. Whether it is by design upon your part I am not at all sure. I am inclined now to feel that if such ever existed now by some aberration of brain or mind you conceive yourself to be the creator of a small universe and to be the creator of a system of healing that is the greatest boon to mankind in the terminology or the equivalent thereof you describe yourself in your encyclopaedia. I am convinced that by some form of self hypnosis you are obsessed with the idea that you have been commissioned by God to bring your claimed only true art of healing to mankind.

In a case in which you had ample opportunity to bring forward any evidence that would fit within the framework of our judicial system of admission of testimony you completely failed to bring any convincing proof of the value of this system of healing except as it came from the lips of 100 or so or 150 poor souls who, without any knowledge of the human body, either with illnesses or with the thought that they had illnesses, swore that they felt themselves relieved by the use of the mechanism. This was very unimpressive, very unimpressive. Not a single scientist from all of those who are found in this country was brought forward to testify to the efficacy or the realism of any scientific principles which you invoked, and the court can only feel that these 112 witnesses whom you brought here, culled from the thousands who used the machine, were simply dupes of your suggestions and highly exaggerated imaginations.

There is an additional element of public danger to this business of delusion upon the part of those who parted with their $90 and perhaps more money that went into the pockets of these so-called normalators—and may I say

that of those who appeared upon the stand certainly none was in the least qualified to minister to the ills of human beings, not the least, by fundamental education or experience. There is always the inherent danger that people with very dangerous ills existing in their inception who should have the advantages of progressive medical treatment that is so well known that no one can ridicule or deride it, who will substitute your system until it is too late for them to be helped. Of course the medical art is not perfect by any means. Many of its frontiers are still open, but people who are in the incipient stage of cancer or diabetes or many other illnesses may well fall victims to death by reason of being diverted from well known practices in the medical profession to exposing themselves to the diet that you suggest and the shining on themselves of utterly meaningless colored lights.

It is my opinion that this case has well served its purpose in the face of the vast amount of money spent, the vast amount of time expended in this trial, if it shuts off the possible use to those who would otherwise get the benefits of prompt genuine medical attention in the fields especially of cancer and diabetes.

Now, the matter of sentence is before me. As the government has indicated, a maximum of $24,000 in fines and a maximum of 12 years in prison for the individual defendant is possible.

I have given respectful consideration to the government's suggestion that imprisonment is in order in this case. Having in mind, as I have said before, that the one purpose of the court should be to implement the verdict to the extent that the transgression against the law should be stopped once and for all, it may very well be that the government's suggestions of imprisonment may be the only effective way of doing it. My consideration of its recommendation, however, does not lead in that direction.

That is slanted first by the great age of the defendant who is now 73 years. Although he has expressed the notion that he might go on for another 73 years, and as far as I am concerned he may very well do so, I am afraid that would be in the area of prediction by that genuine or apocryphal Russian scientist recently reported in the press who said that we would all soon be living to 125 years and he died soon after he made the prediction at the tender age of 63 or 64.

Mr. Ghadiali, you are an old man. I have no desire—You may sit down.

MR. GHADIALI: I thought your Honor wanted me to stand for sentence.

THE COURT: No; you know my dignity is not easily infringed upon.

MR. GHADIALI: Thank you, sir.

THE COURT: You are an old man. It does not seem necessary to me to so regulate your life so that you should perhaps die in prison, as there would be grave danger of your doing if I gave you an extended prison sentence.

I am not thinking only of the matter in that field of emotion or sentiment. I am thinking of it in another matter. In the creation of this little universe of your own, like all of those who do that sort of thing, you have attracted a fringe around you. That has become quite a large number. To send you to prison would be to perhaps push that fringe over the ledge that it even now teeters on into becoming a cult. And more than from the matter of indulging the emotional and the sentimental prohibition against sending such an old man to prison, I shall not give your disciples and followers the morbid satisfaction of regarding you as a martyr.

I shall not, therefore, adopt the government's suggestion because I think it might be a highly dangerous one.

We have far too many cults with their masters and their prophets, their leaders. I know also of the little German who was sentenced to jail and wrote a book there that was instrumental in bathing the world in more blood than has ever occurred since the beginning of civilization. So I will not send you to prison at this time.

I will endeavor to construct the sentence against you and your company without imprisonment but so that it will be designed to effect what is the intention of the verdict of the jury of this court, namely, to bring to a complete stop the promotion of this so-called science in this country."

OPINION OF THE CIRCUIT COURT OF APPEALS

UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 9352. October Term, 1947

UNITED STATES OF AMERICA
v.
DINSHAH P. GHADIALI
and
DINSHAH SPECTRO-CHROME INSTITUTE
Appellants

Appeal from the United States District Court for the District of New Jersey

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Argued January 6, 1948
Before Maris, McLaughlin, and Kalodner, Circuit Judges.

(Filed February 9, 1948)

Per Curiam:

The defendants have appealed from their conviction in the district court for the district of New Jersey upon twelve counts of an indictment charging them with introducing into interstate commerce in violation of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. chap. 9), certain devices known as Spectro-Chromes intended for use in the cure, mitigation, treatment and prevention of disease in man which were misbranded. The devices in question consist of a cabinet equipped with a 1000 watt electric light bulb, an electric fan and water container for cooling purposes, two glass condenser lenses to focus the rays from the electric light bulb and five ordinary glass slides, each of a different color. Attached to the devices were plate labels bearing, in part, the following:

SPECTRO-CHROME METRY

MEASUREMENT AND RESTORATION OF THE HUMAN RADIO-ACTIVE AND RADIO-EMANATIVE EQUILIBRIUM (NORMALATION OF IMBALANCE)

BY

ATTUNED COLOR WAVES

THE SCIENCE OF AUTOMATIC PRECISION

NO DIAGNOSIS—NO DRUGS—NO MANIPULATION—NO SURGERY

ORIGINATED, DEVELOPED, APPLIED, COPYRIGHTED 1920 BY

COLONEL DINSHAH P. GHADIALI, M.S.C.,

M.D., M.E., D.C., Ph. D., LL.D. N.D., D. OPT., D.F.S., D.H.T., D.M.T., D.S.T., ETC.

METAPHYSICIAN AND PSYCHOLOGIST

The devices were accompanied by various pieces of printed matter, two of them being entitled in part "Spectro-Chrome Home Guide" and "Favorscope", which related to the devices and contained statements relative to their therapeutic value in the cure, mitigation, treatment or preven-

tion of disease, and directions for their use. The directions called for doing what the defendants call "irradiating" the body of the patient with what the defendants describe as "attuned color waves" projected by the device through the colored glass slides. The particular slide or combination of slides required to produce the exact color said to be needed to treat a given disorder was specified in the "Spectro-Chrome Home Guide". The patient was advised to adhere to a designated diet. He was directed to subject himself to "irradiation" while facing south or lying in a north and south position with his head to the north. The "tonations" from the Spectro-Chrome were to be taken at times specified by the defendants in the "favorscope" which accompanied the device and which, they alleged, was compiled on the basis of solar, lunar and terrestrial radiant, gravitational influence.

The government presented a large amount of evidence which, if believed, was amply sufficient to support a finding by the jury that the labeling of the defendants' Spectro-Chrome device was false and misleading within the meaning of Sec. 502 (a) of the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 352 (a)) in that the device did not have the therapeutic value which the labeling claimed for it. The jury, evidently believing the government's evidence, found the defendants guilty of violating the act. The defendants upon the present appeal have presented eleven points which they assert require the reversal of the judgment of the district court. We have examined with care each of the points raised by the defendants and we find each to be wholly lacking in merit. It would serve no useful purpose to discuss them in detail. Suffice it to say that our consideration of the case has left us completely satisfied that the defendants had a fair trial. Indeed the trial judge, if anything, leaned over backward to afford them the fullest opportunity to establish their

defense and he submitted their case to the jury in a charge to which no objection was or fairly could be made.

The judgment of the district court will be affirmed.

MARIS, U.S.C.J.

A true Copy:

Teste: Ida O. Creskoff

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

Brief In Support Of Petition

QUESTION I

Can Criminal Proceedings be inaugurated by Administrator, reporting to U. S. Attorney Criminal Violation, without giving appropriate Notice to Petitioners with opportunity to present views?

ARGUMENT ON QUESTION I

U. S. Code, Title 21, Food And Drug Act, Section 335 on "Hearing before report of criminal violation" states: "Before any violation of this chapter is reported by the Administrator to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding". The Petitioners did motion the Trial Court to quash the Indictment on the stated ground. On Argument, the Motion was denied. (O-8). No Notice was given to the Retitioners, by the Administrator or a Hearing of any kind was given. In the Direct Examination of George P. Larrick, Chief Inspector of the Food & Drug Administration, he was asked by Ghadiali whether

any such Notice was given to the Petitioners; objection to the question was raised by Respondent and the Court said: "The Commissioner is required to submit to the Department of Justice or to the United States Attorney, his complaint." (Tr. K-4789). Notwithstanding, the Court did not permit the Witness to answer the question, holding that it "is not a jurisdictional requirement for the court. It is an administrative requirement as far as the Commissioner is concerned." (Tr. K-4790-4791). Petitioners contend that as the Department Of Justice can not move without a Complaint from the Administrator, failure of the Administrator to comply with the Law which says "SHALL", should make the Indictment illegal and untenable.

The Respondent contends that the Decision given by this Honorable Supreme Court in the case of United States vs. Dotterweich, 320 U. S. 277, applies to the present case. The construction put on the Food And Drugs Act of 1906, 34 Stat. 768, in the case of United States vs. Morgan, 222 U. S. 274 does not apply to the present case, because the 1906 Act had "Fraud" as a necessary factor in the Conviction, whereas in the 1938 Statute, it is plain "False or misleading" Statement. The Petitioners, therefore hold that neither the Dotterweich nor the Morgan Decisions should regulate the views of this Court in the present case, as Congress provided a downright protection to a supposed Violator, by the change of phraseology, inserting "SHALL" in the Section 335, of Title 21 U. S. Code.

The cogency of the necessity of giving an "appropriate notice" to any person before instituting Criminal Proceedings, is well recognized by high authorities. In his "A Treatise On The Law Of Food, Drugs And Cosmetics", Harry Aubrey Toulmin, Jr., J.D., Litt. D., LL.D., Member of the Bar of Supreme Court and Various Federal Courts, Bar of Ohio, with Introduction By Paul V. McNutt, LL.B.,

LL.D., L.H.D., Administrator of the Federal Security Agency, states in Section 59, Page 82, thus:—

"Under the 1938 Act it will be seen that the hearing and notice are only required prior to a report by the Administrator to the District Attorney of a criminal violation for prosecution, when the contemplated prosecution is to be **criminal** in nature. Thus it would appear that, if the contemplated proceeding is to be a libel or seizure, and not a suit to enforce the criminal penalties of fine and imprisonment, hearing and notice are not required."

In the present case, the intention of the Respondent was clearly to have a heavy penalty imposed on the Petitioners. Indicting the Petitioners, without giving any notice, "appropriate" or otherwise, was a clear Violation of the provisions of the Statute, rendering the Indictment invalid.

QUESTION 2

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in permitting introduction of Testimony, outside of the scope of the Indictment?

POINTS ON QUESTION 2

(2a) In his Opening Address to the Jury, the Prosecutor said: "We are going to bring you the medical men who will tell you what their conception is and that this machine——and they have used this machine, models like them, they have used this machine on various occasions, . . . " (Tr. A-66).

(2b) In the Direct Testimony of Lillie M. Zeis, the Prosecutor asked: "When you say 'Spectro-Chrome', are you referring to a machine that looks like any of these machines over here?" She said "Yes." (Tr. B-762).

(2c) During the Direct Testimony of Lillie M. Zeis,

the Prosecutor said: "Your Honor, without belaboring this situation, may I suggest to you, in addition to the statement you made as to method, plan, scheme, and course of conduct that additionally this Testimony goes to show that a machine similar in type to that involved in the indictment will not do what the labeling claims, and therefore, that machine is involved in this Testimony."

THE COURT—Of course, that is within the scope of the method and system, and so on.

MR. RICHMAN—As long as we understand—

THE COURT—But, again I must caution the jury that if the jury finds this testimony leads to what would be a conviction under the charges of this indictment and the acts so found don't come within the time charged in the indictment, which is the year 1942, then there can be no conviction. (Tr. B-769).

(2d) In the Direct Testimony of Dr. Ira I. Kaplan, the Prosecutor asked: "I indicate to you these machines over on the left-hand side of the court room. Are you familiar with machines of that type?" To this the Witness answered: "The middle one on the left is the one that I used."

Q—You are referring to G-123?

A—I don't know the number. That is the type. (Tr. C-954).

Further on, in Cross Examination, the Witness said: " . . . yes, I have the machine number—NUA6172." (Tr. C-1021).

(2e) In her Direct Testimony, Marcy V. Quain stated: "I took Mother to the office of Clemens P. Neumann on South Compton Avenue, St. Louis." Further on she stated that she visited Neumann's office "Shortly after Christmas of 1936."

(2f) During an Argument about a certain Testimony offered by the Prosecutor, the Trial Judge said:

" . . . Mr. Ghadiali is entitled to the purpose of this testimony, Mr. District Attorney. He is entitled to know the purpose of this. There is nothing named in any of the twelve counts. Can't we get down to the twelve counts of the indictment?" (Tr. C-1177-1178).

(2g) In the Direct Testimony of Edmund L. Mosbacher, the Prosecutor asked about his sick wife: "When did she die?" The Witness answered: "February 7, 1941." (Tr. C-1220). Objection having been raised about Device used being one not in the Indictment, the Prosecutor contended admissibility, (Tr. C-1221-1222). On Argument following, the Court stated: "Provided the Government sustains the burden of proof that the device shipped and that device named in the indictment is established to be misbranded." (Tr. C-1222-1223). In further Testimony, the Witness stated:

Q—Do you see any machine in this court room similar to the machine he used?

A—The one you have your hand on looks something like it.

Q—Come down and take a look.

A—I could not identify it. (Tr. C-1231).

In Cross Examination, the Witness was asked: "How many slides of color are there in this equipment?"

A—I could not recall at the present time. (Tr. C-1234).

Q—Do you know what the label said?

A—No, sir. (Tr. C-1235).

(2h) In his Direct Testimony, Leo F. Kavanaugh admitted that he took his son to Clemens Neumann. (Tr. C-1336-1337). Further, on being questioned about the machine rented by him from Clemens Neumann, he said: "Well, it looks something like this. It was metal. That is a wooden one." (Tr. C-1338).

(2i) In his Direct Testimony, Thomas Ciolli being

questioned about the Label on his Machine, answered: "I don't remember that but a model like this here (indicating)." (Tr. D-1371).

(2j) In his Direct Testimony, John De Long being questioned about his Machine, said: "It looked like one of those wooden boxes." (Tr. D-1620).

(2k) In his Direct Testimony, Willard D. Miller, being asked about his Machine:—

Q—Will you come down and point out one like it? (Witness complies).

A—One like this here. (Tr. E-1969).

(2l) In her Direct Testimony, Emma Bishop Merrick,. was asked about the payment made on her Machine and a Check made to the Order of Spectro-Chrome Distributing Company and dated October 10, 1940, was introduced in Evidence, marked G-209. (Tr. E-2045). Later, she pointed to one in the Court Room and said: "It was this type." (Tr. E-2046).

(2m) In his Direct Testimony, Vincent De Marco on a question of the Prosecutor, stated that he lived at "2901 Atlantic Avenue, Atlantic City." (Tr. D-1578). In Cross Examination by the Individual Petitioner, he admitted that the Device in his possession was taken away by "Food And Drug Administration." (Tr. D-1610).

ARGUMENT ON POINTS OF QUESTION 2

(2a) The Indictment in each case, is the instrument the true and sole use of which is to charge the Crime specifically and to inform the Accused, of the Offense so alleged against him. In the present Case, the Indictment charged the present Petitioners with having introduced in Interstate Commerce, twelve certain Devices, with "false and misleading statements" in their Label and Labeling. That was on what the Petitioners were called to defend. There was no mention or allusion of any other Device but

those twelve. The Petitioners went to Court, prepared against Charges made in the Indictment, without having any knowledge of numerous extraneous Devices, foreign to the Indictment. The Prosecutor's statement in his Opening Address to the Jury, struck the Petitioners as an unusual, devious and extraordinary line of proving a Case and they voiced repeated objections against such Testimony going into Evidence. Palming off as Evidence "models like them," without any proof of their genuineness, decidedly violated all recognized Rules Of Evidence.

(2b), (2c) Here the Court talked about a "method and system" of proving as the Prosecutor alleged. The Witness, under her Cross Examination, admitted that the Device in question was gotten by her before February 11, 1937. (Tr. C-1140). As the Corporate Petitioner came into existence on September 15, 1941, (Exhibit G-1, Tr. A-68), the introduction of this Testimony obviously was out of order.

(2d) Here the Witness was unable to identify the Device, but, later named a Number NUA 6172. The type represented by that Serial Number, was never made by the Corporate Petitioner.

(2e) The Device used by Clemens Neumann was neither identified nor in Evidence. Year 1936 was long prior to the birth of the Corporate Petitioner. Furthermore, there is nothing to show that the Corporate Petitioner was responsible in any way for the activities of Clemens Neumann.

(2f) The Honorable Trial Judge distinctly comprehended the Issues involved in the 12 Counts. Said he: "I think even with some other machines not named in the indictment were shipped in interstate commerce and were misbranded that that does not prove the government's case." (Tr. E-1863).

(2g) The date, February 7, 1941, clearly shows that the Corporate Petitioner had no connection with the Death; it was prior to its birth. Whatever happened to the sick woman on that date or at any time prior, can assuredly not be laid at the door of the Corporate Petitioner. The Witness, even with the Prosecutor's prompting with his hand laid on the Device, could not identify what type of Device was used. He could not even remember how many Color Slides were there in the Device or what its Label said.

(2h) There is no Evidence that the Petitioners were responsible for the activities of Clemens Neumann. Further, the "rented machine" was neither identified nor produced for testing its genuineness. That Device too, was not in the Indictment.

(2i) The Witness could not remember the Label of his Device; his Device also, was not in the Indictment.

(2j), (2k) Except pointing to "looked like one" and "One like this here," both could give no positive Evidence even of similarity. The Devices were foreign to the Indictment and were not produced for test of their genuineness.

(2l) The Corporate Petitioner had no connection, with any payment made to Spectro-Chrome Distributing Company. Furthermore, the Corporate Petitioner was not in existence on the date of October 10, 1940. The identification of that Device also, was not definite.

(2m) Atlantic City being in the Sovereign State of New Jersey and the Petitioners being in the same State, there was no Interstate Commerce involved. The Respondent had no legal right to "take away" the Device and furthermore, being an Intrastate Transaction, the Witness had no standing to appear in the Federal Trial. It was an arbitrary, autocratic act on the part of the Respondent.

SUPPORTING ARGUMENT ON QUESTION 2

All during the Trial, strenuous Objections were expressed by the Petitioners against the introduction of Testimony pertaining to matters and Devices outside of the scope of the Indictment. To rebut the Objections of the Petitioners, the Respondent filed a Type-Written Brief, in the U. S. Circuit Court Of Appeals, in which on pages 12, 13 and 14, the Respondent endeavored to justify its position as follows:—

"It is the contention of the Government that the twelve devices involved in the indictment were misbranded when caused to be introduced or delivered for introduction into interstate commerce (prohibited by 21 U.S.C. 331 (a) in that their labeling (21 U.S.C. 321 (m)) consisting of the label attached to each device and various items of written, printed and graphic matter shipped with each, contained false and misleading statements within the meaning of 21 U.S.C. 352 (a), quoted above. In proof of these charges it is not required that the Government specifically show that the device owned by each of the consignees named in the indictment failed to accomplish the results promised by the defendants. It is sufficient if it be shown that similar devices failed to effect such results when used in accordance with defendants' directions in the labeling to the consignees. The following cases, holding respectively as indicated, disclose that proof with respect to similar machines, apparatuses or devices has been admissible to show that the machine, apparatus or device in question was incapable of substantiating the claims made in its behalf to show comparative quality, functioning or failure to comply with warranty.

Ames vs. Quimby, 106 U.S. 342, 1 S.Ct. 116, 27 L. Ed. 100 (1882). Admissible to show the quality of shovel handles furnished by the plaintiff to another company,

when such were evidenced as the same quality and kind as those furnished the defendant by the plaintiff.

Ward vs. Blake Manufacturing Co., 56 Fed. 437 (C.C.A. 8, 1893). For the purpose of disproving an allegation that water cylinders in pumping machinery were weak, it was competent to introduce evidence that plaintiff had put up pumps in another city, made from the same patterns, and identical in all respects, which pumped successfully against a static head much greater than that of defendant's pumps.

City of Findlay vs. Pertz, et al., 74 Fed. 681 (C.C.A. 6, 1896). There was no error in the admission of evidence, and none in the charge, in respect to force and weight. The charge was: "The manner in which these machines did their work elsewhere is not proof that these machines did their work well at Findlay, but is a fact important and material, if you find the separators were all constructed alike, as showing whether the Findlay machines were properly put on, properly cared for, and fairly tested. Because two or more machines, equally well make, and similarly constructed and used, ought to work alike, and if one worked well at Kokomo, Indiana, and another failed to work at Findlay, and both were tried and used under substantially similar conditions, the fact that the Kokomo separator did work is a circumstance which ought to help you very much in deciding whether the failure of the separator to work at Findlay was from plaintiff's failure to properly put them upon the gas wells, and properly care for and use them after they were attached." Evidence that the same machines, upon other wells, did work automatically, was a circumstance varying in importance as it might appear from other evidence that the conditions were similar or dissimilar.

Savery Hotel Co. vs. Under-Feed Stoker Co., 178 Fed. 806 (C.C.A. 8, 1910). "It was proper to allow plain-

tiff to show that in other places the stokers were successfully operated with the same kind of coal. The evidence bore directly upon the contention of the defendant, and it is not perceived that any other proof could have been as satisfactory."

"The capacity, efficiency, excellence or compliance with warranty of an article, machine, or apparatus may be shown by evidence comparing it with a similar article, machine, or apparatus, where the similarity is sufficient to give it probative value, and the other circumstances as to place, care, use, etc., are not so materially different as to introduce collateral issues." 66 A.L.R. Ann. 82.

Hazlehurst Compress & Manuf'g. Co. vs. Boomer & B. Compress Co., 48 Fed. 803 (C.C.A. 5, 1891). Testimony in relation to other presses is not incompetent when it is shown these presses were of the same make and pattern, and were operated under similar circumstances and conditions.

Waters Patent Heater Co. vs. Smith, 120 Mass. 444 (1876). The defendant, the buyer of a heater, was properly allowed to show that other heaters, made and sold by the plaintiff to other parties, identical in construction with the one in queston, transmitted oil to and injured their boilers, this being in support of defendant's claim that the heater was not as represented, and that he was induced to buy it by the false and fraudulent representation of the plaintiff's president as to its capabilities, particularly with respect to its capability of keeping oil from reaching the boiler."

The Petitioners emphatically differ from the views expressed by the Respondent and the Citations in their application to the Case at Bar. The Civil Cases cited above are all prior to the enactment of the present Statute and even then, in those cases, the make and pattern were the

same, whereas the Devices mentioned under this Question 2 were not even made by the Corporate Petitioner in many cases and not identified. One mentioned in Point (2m), had not even gone into Interstate Commerce.

The Appellants were confused and prejudiced by the action of the Trial Judge in the following particulars:—

When Testimony was first offered by the Government, with relation to other Devices, the Trial Judge made the statement that such Evidence was not proof of the alleged violations set forth in the Indictment and admitted the Testimony only with the understanding, that it would be directly tied to the Counts in the Indictment and with the understanding that in the event there be no tie it would be stricken. Subsequently the Trial Judge permitted this Testimony under the theory that such proof was received only to show method and not as proof under the Indictment.

Objections and Argument about such discrepancy, will be found scattered throughout the Trial. (Tr. B-767, C-1155-1156-1157).

Eventually, the Trial Judge permitted the Testimony to be used as proof of the alleged violations set forth in the Indictment.

To show method, it must be shown that the act proved was an unlawful act and that it referred directly or led up to the alleged Violation. No effort was made on the part of the Government to show that the Devices, other than those in the Indictment, were mislabeled or misbranded, but the contention of the Government is that if the proof showed that other Devices would not do what the Devices mentioned in the Indictment were represented to do, that this Evidence constituted proof of the failure of the Devices mentioned in the Indictment.

The Government is bound to prove the alleged Violations.

The isolated cases cited above by the Respondent, the most recent being decided in the year 1910, apparently hold that in a Civil Case Testimony may be produced as to the condition or workability of machinery, **identical** with the object about which the suit is pending. These Cases deal with a Breach Of Warranty and have no application to a Criminal Case. Those Rules Of Evidence in Civil and Criminal matters are not the same.

The normal, usual and proper method to prove a Criminal Case, is for the Government to prove directly the truth of the allegations contained in the Indictment. To attempt to prove the allegations of the Indictment by bringing in extraneous matters, Devices and Testimony is certainly a novel method. No Criminal Cases were cited by the Government which uphold such unique method. Certainly, it is incumbent upon the Government to show the approval of such method by Legislation or Decisions of competent Criminal Courts. The fact that there are no such authorities, leads to the inevitable conclusion that neither Congress nor the Courts of this Country ever gave the stamp of approval to such devious method.

Thus, the Issues became so enlarged, that Petitioners could not meet the new matters raised at the Trial. The Jury could and probably did conclude that the Petitioners were being tried for numerous other offenses than those charged in the Indictment.

The Petitioners were entitled to have the Government prove its case against them, directly and with proof that could have been anticipated under the terms of the Indictment. The Jury were asked to assume that the Devices outside of the Indictment were **identical** with the ones mentioned in the Indictment, without competent proof to establish this fact.

Assume that a person were charged with introducing in Interstate Commerce a barrel of Apples, which were

alleged to be rotten and unfit for human consumption. Could the Government in the Trial of such person, under an Indictment, remain silent as to the quality of the barrel of Apples mentioned in the Indictment and then endeavor to establish its case by proof that **another** barrel of Apples from the same tree shipped to **another** person at the same time, was rotten? This, of course, would be absurd, but not more so than the "proof" of the Government in the case at Bar.

This Question 2 is deserving of the consideration of this Honorable Court, as one in which the welfare of the general public is vitally concerned. It has never been duly adjudicated. Amendment VI of the Constitution of the United States says that "In all criminal prosecution, the accused . . . be informed of the nature and cause of the accusation." This does not permit a Court any enlargement of the Indictment, such as the Trial Court made in this case.

QUESTION 3

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, permitting introduction of Testimony, of Medical Doctors and others, in regard to an original School Of Healing, of which they had admittedly no knowledge or experience?

POINTS ON QUESTION 3

(3a) Dr. David L. MacAdam, brought by the Government as an Expert on Color, spoke in Direct Examination about the Tests made by him, of the 5 Color Slides used in the Spectro-Chrome System. In Cross Examination, he was asked: "But you did not make a spectrophotometer test of the combinations in your laboratory, a test of the combinations?" His answer was: "No, it is not necessary." (Tr. B-723).

(3b) In his Cross Examination, Dr. Ira I. Kaplan,

a Government Witness, when asked about his knowledge of Spectro-Chrome Metry, answered: "I don't qualify as an expert in your system." (Tr. C-963). Further on, the Prosecutor admitted that: "He does not pretend to come in as an expert on color." (Tr. C-970). Subsequently, the Witness in Cross Examination admitted his membership in the American Medical Association since 1914 and was asked:

Q—And what school of medicine are you a member, allopathy or homeopathy?

A—I belong to allopathy.

Q—Did you study in any other school of medicine outside of allopathy?

A—I did not study.

Q—But you do admit there are other schools of healing outside of allopathy school?

A—There are other suggested methods of healing, whether you call them schools or not I don't know. (Tr. C-1010-1011).

Being asked: "Will you give me your idea of chemical man?" Dr. Kaplan answered: "I don't know enough about how many chemical elements there are in a human being. I am not a chemist." (Tr. C-1052).

(3c) In his Cross Examination, Dr. Joseph L. Ferris, a Government Witness, was asked: "Doctor, please, are you a member of the American Medical Association?" He answered: "Yes, sir."

Q—What school of therapy do you represent, please?

A—Allopathy.

Q—Are you aware of the fact that the allopathic school has always been in opposition to other schools of healing?

A—Yes, I know it. (Tr. C-1258).

(3d) In his Cross Examination, a Government Witness Dr. Joseph P. Costello was asked: " . . . is the allopathic school of medicine or healing opposed to other

schools of healing?" He answered: "I suppose they are." (Tr. C-1289).

(3e) In his Direct Examination, Dr. Arthur C. DeGraff, was asked by the Prosecutor:

Q—Are you familiar, Doctor, with the diet which has been called the "Rational Food of Man"?

A—Yes, I have read that.

Q—Did you place these patients on that diet?

A—We did not. (Tr. E-1893).

On Cross Examination, Dr. DeGraff admitted: "I am quite sure they got meat." (Tr. E-1942). He also admitted that he "did not read the entire text" of Spectro-Chrome Metry Encyclopaedia. (Tr. E-1919).

(3f) In Cross Examination, Dr. Walter Bensel, a Government Witness was asked: "Doctor, please, when you spoke about color will you give me the definition of the word color in your mind?" He replied: "I am not an expert on the question of colors or on the question of any visible light." (Tr. F-2230).

(3g) In his Direct Examination, Dr. Joseph T. Beardwood, a Government Witness admitted that: "We did not follow the diet advocated in the Encyclopaedia . . " (Tr. D-1412). In Cross Examination, he admitted about Spectro-Chrome Metry Encyclopaedia (Exhibit G-34), "Well, I didn't study it thoroughly, no." (Tr. D-1462). He also admitted that his Diagnosis was from Medical Standpoints. (Tr. D-1463).

(3h) In his Direct Examination, Dr. George G. Ornstein, a Prosecution Witness, admitted that he did not follow the Food System advocated by the Petitioners. (Tr. D-1718.) In Cross Examination, he was asked:

Q—Did you study these 3 volumes as a student?

A—I didn't study it as a student but I read those parts that I thought I would need for this trial treatment. (Tr. D-1742).

(3i) In his Direct Examination, Dr. George Dobbs, the Medical Officer of the Eastern District of the U. S. Food And Drug Administration was asked by the Individual Petitioner:

Q—Have you studied light and color in any respect?

A—In a general way. I am not an expert on light and color.

Q—Have you studied the effect of light and color upon the human body?

A—I am familiar with the fact that light and color have absolutely no effect in the treatment of human ailments and disorders.

Q—What study did you make of it did you make to come to such conclusion?

A—In our knowledge of medicine, in the study of physiology, in the study of pathology, the course of disease, we have studied the various phenomena that are able, capable of effecting remedial changes, and light and color are not among those which can favorably influence a course of disease. (Tr. K-4742).

Q—Any other medical study, did you study the science of spectroscopy, yes or no?

A—No. (Tr. K-4744).

Q—Are you familiar with the Spectro-Chrome chart and Spectroscope?

A—No, sir. (Tr. K-4754).

ARGUMENT ON POINTS OF QUESTION 3

(3a) The Spectro-Chrome Equipment has 5 Color Slides, which by their various Combinations, produce certain 7 other Colors of different Wave Lengths or Oscillatory Frequencies. The Science of Spectro-Chrome Metry is based on such Wave Lengths or Oscillatory Frequencies, producible by Superimposition of the specific Color Slides. The Government Witness, failed to test the Superimposi-

tion of Slides and by his own admission, showed lack of knowledge of the basic principles of Spectro-Chrome Metry. The Labels, affixed to the Government Exhibits of the Devices brought into the Trial Court, plainly had on them marked U. S. Patent Number 1,544,973, which in its text clearly stated about the production of such specific Oscillation Frequencies, by means of such Combinations.

(3b), (3c), (3d) These Witnesses belonged to a School Of Medicine (Healing) which is well known to be opposed to all other Systems Of Healing. Their School is established on the rules of Allopathy, which is defined as "The curing of diseased action by inducing a different kind of action in the body." It is also defined as "A system of therapeutics in which disease is treated by exciting a morbid process of another kind or in another part—a method of substitution." Allopathy represents the commonly known and age-old System Of Healing, being known as the "Regular School Of Medicine," which has from times immemorial utilized solely Drugs and allied Remedies, recently including Vaccines, Injections, Sera, Anti-Toxins and the like. The Witnesses belonged to that School and admittedly knew nothing about this most modern development in relieving the Sufferings of Human Beings. Dr. Ira I. Kaplan admitted having no knowledge of even the Chemical Elements in the Human Body, upon which Spectro-Chrome Metry functions.

(3e) Dr. Arthur C. DeGraff admitted ignoring the Rational Food Of Man System primarily and strenuously advocated in Spectro-Chrome Metry and deliberately fed the patients contrary to the teachings of the new Science. He did not "read the entire text" of Spectro-Chrome Metry Encyclopaedia, which contained the full Technique essential to warrant his making the "Tests" in a proper and successful manner.

(3f) Dr. Walter Bensel declared his ignorance of

Light And Color, the very nucleus of Spectro-Chrome Metry.

(3g) Dr. Joseph T. Beardwood "did not follow the diet advocated in the Encyclopaedia . . . didn't study it thoroughly" and admitted that his Diagnosis was from "Medical Standpoints". As foundation in Spectro-Chrome Metry, the orthodox method of Differential Diagnosis which is found wrong in numerous cases, because of the inclusion of much guesswork, such method of naming Disorders was discarded and another method of removing the possibility of human error was established. In the "Spectro-Chrome Home Guide," (Exhibits G-33, G-44, etc.) is given the correct interpretation.

On page 55 it states: "2. As all Disorders of the Physical Body are due to Imbalance of its Chemical Elements, the Originator of Spectro-Chrome patiently researched what Elements were unbalanced in each Disorder and finally established certain Axioms which eliminated all guesswork and Differential Diagnosis."

Spectro-Chrome Metry Encyclopaedia, (Exhibits G-34, G-91), Volume 2, at page 486, clearly states:—

"It promptly abolished **all** Differential Diagnosis . . ."

In Spectro-Chrome, the Originator condensed the complications of Differential Diagnosis into certain Axioms printed on pages 56, 57, 58, 59, 60, of Spectro-Chrome Home Guide. On its page 59, paragraph 3 states, "By following these Axioms and tonating accordingly, Differential Diagnosis is abolished and all guesswork is eliminated." Page 22 of Spectro-Chrome Home Guide and page 487 of Volume 2, Spectro-Chrome Metry Encyclopaedia, show the original Spectroscopic Method used for such purpose in the new Science and its merits were proven during the 27 years of its use. Thus, ignoring the study and the Technique given for successful use of the Device, naturally gave rise to the alleged failures of those who

were brought in to pose as "Experts" on a new Science, totally at variance with their ever-changing and discarded theories.

(3h) What applies to Point (3g), may apply equally to Dr. George G. Ornstein.

(3i) Dr. George Dobbs was the employe of the Food And Drug Administration (the true Respondent who figured in this Trial), who was instrumental in picking the alleged "Experts" for their respective "Tests," of the value and merits of Spectro-Chrome Metry and it was he who directed and gave certain disjointed instructions, suitable to his views, to those "Experts," as was admitted by them. (Tr. C-958, D-1412, D-1775, E-1888, F-2212).

SUPPORTING ARGUMENT ON QUESTION 3

In his "The Law Of Expert Testimony," Henry Wade Rogers, A.M., LL.D., Former President of the Northwestern University, Former Dean of the Law School of the University of Michigan, in the Third Edition rewritten and enlarged by Benjamin Werne, LL.B., J.S.D., Visiting Lecturer in Medical Jurisprudence, College Of Medicine, New York University, on Page 367, Section 159, in speaking about "Schools of Medicine" states in part thus: " . . . a physician or surgeon is entitled to have his manner and mode of treatment of the patient tested by the rules and principles of the school of medicine to which he belongs, and not by those of some other school."

"When the propriety of osteopathic treatment is in issue the ordinary physician should not be permitted to give an opinion, unless it appears that the schools to which the witness and the defendant belong require and employ the same treatment. (Grainger vs. Still, 187 Mo. 197, 85 S. W. 1114, 70 L. R. A. 49, 59 (1905). Cook vs. Moats, 121 Neb. 769, 238 N. W. 529, 78 A. L. R. 694 (1931), and note)"

"The skill of any medical practitioner is to be judged

by the requirements of his own school. Williams vs. Marini, 105 Vt. 11, 162 Atl. 796, 797 (1932). The Allopathy or Drug School of the Witness, being opposed to the new School of Spectro-Chrome Metry, in which the Witness was admittedly untrained, was not the Healing System by which Spectro-Chrome should have been measured. The attention of the Court was especially drawn to this relevant and material matter by the Petitioners in their Pretrial "Motion For Restriction On Expert Testimony" (Record On Appeal, R-53) and argued subsequently, on various occasions.

Another essential phase in the Testimony of these "Experts" was, that they all had invariably experimented, with Devices other than those in the Indictment, all of which formed a group of Devices untested for genuineness and some not even made by the Corporate Petitioner. (Question 2, Points (2b), (2c), (2d), (2e), (2g) supra).

There is another vital phase herein involved, on a point in which this August Court figured some years ago. It was in connection with the interference created by the American Medical Association, to which these Medical Doctors belonged. That Organization was charged with Violation of the Anti-Trust Laws and along with the District of Columbia Medical Society indicted by the United States Government on December 20, 1938. Conspiracy to stop a Health Insurance Group of Medical Doctors was also averred against the Organizations. On Trial in Washington, D. C., both the American Medical Association and the District Of Columbia Medical Society, were found "Guilty" and each was fined $2,500.00. On Appeal, the Circuit Court affirmed the Sentence. Finally, the Case went to the Honorable Supreme Court Of The United States, which after due deliberation, upheld the Sentence on January 18, 1943. (317 U. S. 519). It is obvious that those Medical Doctors, Members of such a

proven "Trust," could hardly be expected to be appropriate persons to pass on the value and merits of Spectro-Chrome Metry, a totally unique and original Science Of Healing, established by a new School of highly advanced concepts. Even their own "The American Illustrated Medical Dictionary", by W. A. Newman Dorland, A.M., M.D. F.A.C.S., Lieut.-Colonel M.R.C., U. S. Army, Member Of The Committee On Nomenclature And Classification Of Diseases Of The American Medical Association, which is recognized as an authoritative volume by Medical Doctors and Experts, speaks on page 1364, of its Twentieth Edition about it thus:—

"spectrochrome (spek' tro-krom) [spectrum + Xr o m a color]. A term applied to a method of treatment consisting of exposure of the part to be treated to light of various colors."

A similar definition was printed in other Editions, since the year 1920, when the Individual Petitioner began to train and graduate prominent Medical Doctors and Surgeons (several in charge of Hospital Departments), in the use of his new Science. The results of the use of the Device were published by the Individual Petitioner, from time to time, in his monthly "Spectro-Chrome", demonstrating over the signatures of those Graduates (Fellows of the American Medical Association), the superiority of this new School Of Healing over the orthodox School. Such advocacy of the new School, was evidently not relished by the American Medical Association, as it started a wave of opposition. In its Journal, dated January 26, 1924, under the caption "The Propaganda for Reform— In This Department Appear Reports of The Journal's Bureau of Investigation, of the Council on Pharmacy and Chemistry and of the Association Laboratory, Together with Other General Material of an Informative Nature— SPECTRO-CHROME THERAPY 'The Latest Revelation in the Healing Art'," appeared the first blast against the

Individual Petitioner and one of his Graduate Hospital Surgeons. The Individual Petitioner's picture in Colonel's uniform headed the article, with slurs such as "Colonel Dinshah Ghadiali, M.D., M.E., D.C., Ph.D., LL.D. and, I suppose, B.V.D." The article extended over 4 columns and in utterly deriding the new concepts, **without investigation**, that Journal severely lambasted him and the Hospital work of that Graduate Surgeon.

On February 4, 1924, the Individual Petitioner wrote to the Editor of that Journal of A. M. A. a respectful letter, asking for Investigation of his System, agreeing to remit in advance expenses to their bankers. Receiving no answer, on April 4, 1924, he sent him a copy of "Spectro-Chrome", of October 1923, wherein a complete report of a certain case in question was printed, with pictures, accompanied by another letter. On June 2, 1924, he sent a Telegraphic Night Letter to the Executive Council of the A. M. A., assembled at the Municipal Pier, Chicago, Illinois, repeating earnestly his prior requests for unconditional investigation. Finally, he, having received no reply and libels against him continuing, on September 22, 1924, he sent an Open Challenge for public debate to the A. M. A., with the following self-imposed Penalty:—

"PENALTY

If you win, I am willing and ready to present to you all my inventions, patents, copyrights, trade marks, business, printing plant, processes for manufacture—everything I have, including my entire Spectro-Chrome Institute and all its belongings, give you an abject unconditional apology and for ever retire, leaving this country never to return."

That Challenge was not accepted or any reply to it given. Subsequently, at his Fourteenth Annual Convention held in the Milwaukee Auditorium, in Milwaukee, Wisconsin, where over one thousand persons were present,

on Saturday, November 10, 1934, a Unanimous Resolution was passed that our Opponents "branded themselves as liars and cowards," by not accepting or appearing in the Open Challenge.

Papers pertaining to all these matters, were offered by the Individual Petitioner but, the Trial Judge refused to take them in Evidence and they were collectively marked D-337 in Identification. The purpose was to show the long-cherished hostility of the A. M. A. and also the Animus of the Medical "Experts" of the Government, who were members of that Organization, which was proven to be a "Trust" striving for an exclusive monopoly in Healing. Their School had nothing in common with the new School and in not attending to that Point during the Trial and permitting the Testimony of Medical Doctors in regard to an original School Of Healing, of which they had admittedly no knowledge or experience and the Technique of which Science they deliberately ignored, the Trial Court made a serious Reversible Error. Furthermore, the Petitioners are unable to comprehend, why those "Experts" were not given to test their cases, the 12 Devices within the scope of the Indictment, but were made to testify about Devices not in Evidence, not mentioned in the Indictment and not tested for their genuineness.

This Question about conflicting views of different Schools Of Healing, especially where an entirely original and successful new School is concerned, deserves the consideration and adjudication of this High Tribunal.

QUESTION 4

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to permit them to show their Good Faith and Honest Motives?

POINTS ON QUESTION 4

(4a) In endeavoring to introduce in Evidence certain correspondence of the Individual Petitioner Dinshah P. Ghadiali, with the Food And Drug Administration, when Commissioner Paul B. Dunbar was on the Stand, as a Defense Witness the Court intervened:—

MR. GHADIALI—The issue, Your Honor, will be in case of an adverse decision in the mitigation. It is the proof of the good faith of the accused person. Your Honor will remember the motion I made before the trial began, about good faith.

THE COURT—Yes.

MR. GHADIALI—And this is the time when I am bringing that out through the correspondence with the honorable Commissioner's department.

THE COURT—But I do not understand, Mr. Ghadiali, that intent is relevant to misbranding under the present law. It may be in mitigation, but if that is what you are driving towards then this is not the time for that because the consideration should be given to mitigation only if, as and when there is occasion for mitigation. (Tr. K-4571).

(4b) In his Direct Examination by Ghadiali, Commissioner Paul B. Dunbar stated thus:—

THE COURT—What is the policy, Dr. Dunbar, of the Food & Drug Administration for giving advice as to proper branding of devices?

THE WITNESS—Invariably where a manufacturer or prospective shipper comes to us in good faith and seeks advice as to how a product can be labeled or produced in compliance with the law, we counsel with him. (Tr. K-4578).

(4c) In his Direct Testimony from the Witness Stand, the Individual Petitioner Dinshah P. Ghadiali was denied by the Court admission of the correspondence with

the Food And Drug Administration, in Evidence, to present his Good Faith and Honest Motives. (Tr. M-5780-5781-5782).

ARGUMENT ON POINTS OF QUESTION 4

(4a), (4b), (4c) The Food And Drug Administration, has had on numerous occasions, correspondence with the Individual Petitioner Dinshah P. Ghadiali. (Tr. K-4564). The Court persistently denied the admission of the correspondence into Evidence. (Exhibit D-473 in Identification). The Witness admitted about their "invariable" rule to counsel about inquiries regarding labels. Yet, such "counsel' was not granted to the Petitioner and when the Defense wanted to show how the approach in "good faith" was made, the Court ruled it out as "hardly relevant." An accused, must be permitted on his Direct Examination, to explain his conduct and declarations. He must be permitted fully to unfold and explain his actions and to state the motives which he claims prompted them. (United States vs. Bennett, 290 U. S. 694, 78 L. ed. 597, 54 Sup. Ct. 1303.) "If parties are to be kept in harness and not allowed to explain their actions when they admit of explanation and when it is needed, but half the evil which was felt under the old rule has been removed" (People vs. Farrell, 31 Cal. 576). While, it may be conceded that in what is called a "Regulatory Statute," Good Faith and Intent may not be pleaded, the right of the Accused to place them for consideration, should not be ignored, as an essential point for weighment by the Jury.

In denying such Substantial Right to the Petitioners, the Court made a Reversible Error, acting in contradiction to the views of this Supreme Court.

QUESTION 5

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in

refusing to permit the Individual Petitioner, Dinshah P. Ghadiali, to show his Qualifications, Experience and Scientific Standing?

POINTS ON QUESTION 5

(5a) In his Direct Examination Anthony V. Porzio was asked about a booklet marked "Authentic Fire Report", which he admitted receiving. It was marked in Evidence as Defendants' Exhibit D-42. (Tr. H-3207).

(5b) In his Direct Examination, testifying for himself, the Individual Petitioner was asked:—

Q—What was your occupation when you left India?

A—I was a medical practitioner. I offer in evidence my certificate of identity from the district magistrate of the district for the government at Bombay as a passport when I left India. The original was burnt in the fire. (Tr. M-5570).

On Argument, the Court denied acceptance of the Photographic Copy in Evidence. It was marked D-501 for Identification only. (Tr. M-5574).

(5c) In his Direct Examination, Ghadiali testified:

MR. GHADIALI—I offer in evidence a certificate showing I was a medical practitioner and so on in 1908, granted by the magistrate of the city of Surat where I was in practice. (Tr. M-5573).

On Argument, the Court marked the Photographic Copies as D-501A-501B, for Identification only. (Tr. M-5574), denying acceptance in Evidence.

(5d) In his Direct Examination, Ghadiali testified:

MR. GHADIALI—I offer in evidence a certificate granted by the professor of mathematics in Wilson's College in 1892 as my being an assistant there for the professor. (Tr. M-5574).

On Argument, the Court marked the Certificate as D-502 for Identification only. (Tr. M-5575).

(5e) In his Direct Examination, Ghadiali testified:

MR. GHADIALI—Here is a certificate of registration from his Britannic Majesty's Consulate in New York . . . I am registered there as a doctor, there, in 1911. (Tr. M-5575).

On Argument, the Court rejected it as Evidence and marked it D-503 in Identification only. (Tr. M-5576).

(5f) In his Direct Examination, Ghadiali testified:

Q—What was the composition of the Allied Medical Associations of America?

In answer to this question and the date of his Membership Certificate, the Witness testified further:—

MR. GHADIALI—It is June 20th, the 20th of June, 1919, when it was granted. The Allied Medical Associations of America was composed of over 300 licensed medical doctors, licensed under the laws of the United States of America in different states. Through the Board of Censorship . . . I was an officer. I was vice-president for two years at that medical association . . . It had a board of censorship to investigate the character and professional standing, ability and reputation of every applicant. I never applied for membership. They investigated themselves through their board of censors, and invited me to membership, and I joined and for two years remained as vice-president. I offer this in evidence. (Tr. M- 5577-5578).

On Argument, the Court ordered it introduced as Exhibit D-505 for Identification only. (Tr. M-5580).

(5g) In his Direct Examination about his Membership in the American Association Of Progressive Medicine, 1918, he testified thus:—

A—The organization of progressive medical doctors is an organization which are fighting the autonomous monopoly of the American Medical Association . . . I was taken over as a progressive medical doctor. My reputation and ability were examined by the board of censors. They

passed upon it. It is mentioned in the certificate. I offer this. (Tr. M-5581).

On Argument, the Court ordered it introduced as Exhibit D-506 for Identification only. (Tr. M-5582).

(5h) In his Direct Examination, Ghadiali testified thus, about his Membership in the American Association Of Orificial Surgeons:—

A—That was a separate organization for those doctors who were practicing in orificial surgery. (Tr. M-5582).

On Argument, the Court ordered it introduced as Exhibit D-507 for Identification only. (Tr. M-5584).

(5i) In his Direct Examination, Ghadiali offered in Evidence a Photogram, showing his former position with the New York Police Reserve Air Service. (Tr. M-5584).

On Argument, the Court ordered it introduced as Exhibit D-475 for Identification only. (Tr. M-5585).

(5j) In his Direct Examination, Ghadiali offered three papers as one Exhibit, showing his Life Membership, with the Rank of Academician in the Maryland Academy Of Sciences.

On Argument, the Court ordered them to be introduced as Exhibit D-508 for Identification only. (Tr. M-5585 to 5588).

ARGUMENT ON POINTS OF QUESTION 5

(5a) This piece of Evidence will qualify many reasons argued in this Brief. The total destruction by Fire, of all the Records and property belonging to Individual Petitioner Dinshah P. Ghadiali, as well as all the Records of the Co:Petitioner, most seriously handicapped them at the Trial. It was for that reason, that they were unable to produce "the best Evidence", in the shape of original documents or Primary Evidence. It lays the foundation for Secondary Evidence. (Camp vs. State, 31, Ga. App. 737, 122 S.E. 249.) (Marshall vs. Commonwealth, 140 Va. 541, 125 S.E. 329).

(5b), (5c) Because the originals, duly sealed and marked, were burnt, the Documents proposed to be introduced, should have been permitted as Secondary Evidence. (Supra Point (5a)). As Ghadiali contended, that he was a Medical Practitioner in India, all along before his departure, as shown by Exhibit D-500 in Ev., Exhibits D-501, D-501A and D-501B, should have been received in Evidence. "Certificate Of Identity", is the way Documents known in this Country as "Passport", were marked there.

(5d) D-502 was admissible as regards the Scientific Education of Ghadiali and should not have been rejected.

(5e) As the Consular Certificate of the British Consulate, was made by acceptance of the Certificate Of Identity, D-503 should have been admitted in Evidence.

(5f), (5g), 5h). As the Label and Labeling were under contest and as the main pivot was deprecation of the new Healing Science of Spectro-Chrome Metry, any matter that the Individual Petitioner Ghadiali, might adduce in support of his knowledge of or competence in the Healing Art, was justifiably admissible. The weight to be given to such Evidence, should have been left to the Jury. The denial of the Court was not proper and was a usurpation of the province of the Jury. D-505, D-506 and D-507 should have gone into Evidence.

(5i) As Ghadiali, had in the Label declared himself as "Colonel" and in the Labeling as "Ex-Commander, New York Police Reserve Air Service," the introduction of D-475 into Evidence, would have been in line of Defense.

(5j) As Ghadiali had in the Labeling declared himself as "Academician And Life Member, Maryland Academy Of Sciences," the introduction of D-508 into Evidence, was pertinent.

SUPPORTING ARGUMENT ON QUESTION 5

During the Trial, the gist of the representations of the Prosecution, was to hold up the Individual Petitioner

Dinshah P. Ghadiali, as a man having no scientific knowledge, scientific standing or scientific recognition. The scientific and researchful life of Ghadiali, has been so replete with recognition of his ability that the great newspapers of America, since his first arrival here, in 1896, at the age of 22, recorded his activities and progress with high regard. He had albums full of such public notices, but, unfortunately that Fire, handicapped him. (Exhibit D-42). However, as a pure historic fact that may be presented to the Jury to weigh his credibility, he called on the Witness Stand a number of representatives of prominent newspapers, who brought reproductions with them of numerous newspaper reports beginning with the year 1896. The papers brought by them were refused in Evidence by the Court and were marked for Identification. (Exhibits from D-441 to D-457 Id., both inclusive). To avoid prolixity, reference is made here solely to a few of them, many of the reports filling columns:—

"THE NEW YORK TIMES, WEDNESDAY,
MARCH 11, 1896.

SAYS X RAYS ARE NOT NEW

Views of Dinshar Pestonjee Ghadially,
the Indian Scientist

PRINCIPLE AN OLD ONE, HE DECLARES

The 'Parsee Edison' Says Many Discoveries
Are Made in His Country—His Plans Here.

Dinshar Pestonjee Ghadially, known in India as the 'Parsee' Edison', late electrician to his Highness Maharaj Rana Sahib of Dholpur, Central India, and also late Telephone Superintendent of Dholpur State, is in this city on a tour of the world. It was Dinshar who electrified the members of the Aldine Club Monday night, on the occasion of their jubilee reception, by impromptu remarks, in the course of which he said the principle of the Rontgen X rays was not new in the East. . . . He talks excellent English, fluent and grammatical. Although not yet twenty-

three years old, he has been a lecturer six years in a variety of deep subjects connected with electricity, magnetism, odic force, heat, light, and various phases of the vital forces . . . Dinshar's ardor was unquenchable . . . He wears a grand medal of the Independent Order of Good Templars, and is a member of those numerous societies of India and the East which believe that there are latent in man forces of a kind that can raise him to the condition and power of a god, if properly cultivated and developed . . . Dinshar's eyes gleam and flash when he talks, and his face illumines with the ardor of unquenchable enthusiasm. . . . 'I have come here,' he said, 'to learn physical powers and to show to the people the existence of spiritual powers. . . . Dinshar was the first lecturer on electric light in India. . . . "—(Exhibit D-447 Id.).

* * * * *

"Scientific American (New York, N. Y.) January 22, 1910.

AN ELECTRIC PERFORATING PEN

By The English Correspondent Of The Scientific American

Though various efforts have been made from time to time to evolve an electrical system of securing an indelible writing record which is complete proof against both forgery and fraud, such devices have proved commercially impracticable. A Parsee inventor, however, Dr. Dinshah P. Ghadiali, has evolved a simple apparatus which is very efficient. . . ."—(Exhibit D-441 Id.)

* * * * *

(NEW YORK, N. Y.)

"THE SUN, MONDAY, MAY 20, 1912.

HIS AUTO X-RAY WILL MINIMIZE PROFANITY

Parsee Scholar's New Invention Locates the Trouble by a Tube in Your Goggles.

HE IS AN EDITOR ALSO

Sixty-Six Other Activities Appear on Business Card of Dr. Dinshah.

Any who recall the visit to this country in 1896 of Dr. Dinshah Pestanji Franji Ghadiali of Surat, India, may be surprised to learn that the Parsee scholar and scientist has been living quietly in this city since last August. His former visit was for the purpose of a lecture tour and to meet Mr. Edison . . . one room is fitted as a combination library and laboratory . . . Dr. Dinshah works twenty hours a day ordinarily and sustains himself entirely on cereals, nuts and fruit. He is a total abstainer and doesn't touch tea or coffee. What he has accomplished . . . He is a medical practitioner, hypnotist, medical electrician, psychologist, mechanical and electrical engineer, president of the Surat Esperanto Group, fellow of the Theosophical Society, fellow of the Templar Institute and a member of International Supreme Lodge, I.O.G.T., Independent Order of Rechabites, Royal Army Temperance Association, International Prohibition Confederation, Indian Temperance Association, National Anti-Vaccination League and the Poona Volunteer Rifle Corps. Taking a deep breath one adds: He is a linguist, critic and author, lecturer on scientific, religious, occult, philosophical, spiritual, ethical and metaphysical subjects and is the district agent of the New Zealand Insurance Company, Ltd. He is the inventor and patentee of an electromagnetic induction cutout, a high tension relay cutout, an anti-forgery electric pen and finally, the automobile fault finder. At the present time he also is working on a wireless electrical invention that he expects will prevent two railroad trains from getting within 500 yards of each other unless you want them to. . . .". (Exhibit D-454 Id.).

* * * * *

"THE EVENING SUN (NEW YORK, N. Y.),
MONDAY, AUGUST 10, 1914.
SEARCH AMATEUR WIRELESS PLANT
EAST INDIAN INVENTOR SURPRISED
BY NAVY OFFICER

EXAMPLE OF VIGILANCE INSPECTION PROVES MESSAGES WERE NOT BEING SENT

Dr. Dinshah P. Ghadiali, an East Indian professor and inventor with a working laboratory at his home in Hillsdale, Bergen County, N. J., was surprised last evening by a visit from Lieut. McDowell of the United States Navy, who was accompanied by a wireless telegrapher . . . He found Dr. Ghadiali a very interesting experimentalist . . . ". (Exhibit D-456 Id.).

* * * * *

"THE NEW YORK TIMES, MONDAY, JANUARY 18, 1915 PATENTS 'TALKING MOVIES'.

New Invention Dispenses with Use of the Phonograph.

Special to The New York Times.

HACKENSACK, N. J., Jan. 17—Moving pictures that talk without the aid of a phonograph are the latest device perfected by Dr. Dinshah P. Ghadiali, an inventor, of Hillsdale. All other movie-talkies schemes have relied upon the phonograph, but Dr. Ghadiali claims to have invented a way to do without the talking machine. Eleven of his claims for the invention have been allowed by the Government Patent Office. The Dinshah Photokinephone Company has filed papers of incorporation here with County Clerk Thompson . . . Dr. Ghadiali is a physician and a native of Bombay, India. He has done considerable writing and has several inventions to his credit."—(Exhibit D-448 Id.).

* * * * *

"THE BROOKLYN DAILY EAGLE, NEW YORK, SUNDAY, JUNE 27, 1915. THAT TERRIBLE FILM FLICKER IS GOING TO BE ELIMINATED BY DR. DINSHAH GHADIALI

Inventor Claims He Has Solved Mechanical Problem That has Baffled Edison in New Shutterless Projector.

The ever-present flickering of the picture on the screen, and its attendant eye strain has hitherto been the main flaw in the enjoyment of photo plays. Many inventors have tried to solve this problem without commercial success. But now comes a projector, which has been demonstrated by its inventor, Dr. Dinshah P. Ghadiali, of Hillsdale, N. J., to be the **ideal** of all motion picture virtues. . . . ". (Exhibit D-450 Id.).

* * * * *

"THE SUN, (NEW YORK, N. Y.) SUNDAY, FEBRUARY 23, 1919.

Police Fast Developing Flying Corps at No Cost to the City

Candidates for First Aerial Traffic Squad Number 200 and Are Being Taught the Essentials in Ground School in Old Central Park Arsenal

Captain D. P. Ghadiali
Governor Of The Police Reserve Aviation School.

New York is the first city in the world to have an aerial police reserve . . . it was decided to place the governorship of the school in the hands of one man. Capt. Dinshah P. Ghadiali was selected. Capt. Dinshah, as he is more familiarly known, is an aviation enthusiast and inventor. He is also a business psychologist and efficiency expert. His time, as well as the time of every one interested in the school, is given absolutely free, and so indeed is every thing from the printing of the stationery to the planes themselves. . . . " (Exhibit D-457 Id.).

* * * * *

"THE NEW YORK TIMES, FRIDAY, JULY 18, 1919.

FAVORS SCANT BATHING RAIMENT FOR WOMEN

Col. Ghadiali Calls Law Demanding Stockings Unmoral in Address to Drugless Physicians.

ATLANTIC CITY, N. J., July 17.—Colonel Dinshah Ghadiali, a native of India, but an American citizen, and one of the founders of New York's Aerial Police Squadron, voiced a protest today against Atlantic City's beach law compelling all women in bathing raiment to wear stockings. His reference to this was made before the convention of the National Association of Drugless Physicians.

"Why should beautiful women—and all the women I see here are beautiful—be compelled by an unmoral, un-American, and inhumane law to cover their beautiful limbs?" he declared in the midst of a discussion upon "unexplained anatomy and centres of psychic force in man."

Women practitioners, comprising more than half of the delegates, led in the applause. Colonel Ghadiali went on:

"What is the difference, I ask you, between a woman's foot and a man's foot? Do not the authorities yet know that they cannot make people moral by law, that only education can do that? Why not make men wear stockings upon legs that are not beautiful and put all horses in trousers? If Atlantic City would be truly moral it would tell women to discard their clothing or don trousers. I hold she has that right no less than man."

Colonel Ghadiali attributed half of the physical woes of the American people to their abnormal appetites. The convention applauded when the Colonel protested against injecting the good and bad qualities of guinea pigs into the human race through the medium of serums, and declared the human body has no conceivable use of alcohol in any

guise. He maintained that most of the apartment houses in New York and other large cities are "prisons full of cells unfit for human occupancy," and asserted that the quickest way to elevate the moral tone of America is to eliminate its night life. . . . " (Exhibit D-449 Id.).

* * * * *

"The World Magazine (New York, N. Y.), July 27, 1919.

DINSHAH, The Mystic Sky Cop

Born a Parsee of India, Now an American Citizen of Distinguished and Versatile Attainments, Dr. Dinshah Holds Fast to the Faith of the Persian Fire-Worshipers.

By M. G. Ackerman

If you are a fancier of picturesque personalities, curious combinations and similar oddities, permit me to direct your attention upon Col. Dr. Dinshah P. Ghadiali. Give a thought to Mayor Hylan's Sky Police—to the aerial cop, and novel methods of preserving law and order among the clouds. In this ultra-modern, wide-awake and exceedingly occidental manner we effect our first meeting with Col. Dinshah, Commander of the Pioneer Wing of the Police Reserve Air Service and Governor of the Police Aviation School . . . Think of dynamite. Dr. Dinshah is a high explosive expert . . . When the United States went into the European war Dr. Dinshah, unable to serve in the field, presented the Government with an invention which has been in constant use—a mechanism for testing airplane and other engines. With the formation of the aerial police, he enlisted in that branch, and has taken a prominent part in the movement. . . . ". (Exhibit D-451 Id.).

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"THE WORLD, (NEW YORK, N. Y.), SUNDAY, AUGUST 24, 1919.

POLICE FLY TO JERSEY

Dwyer and Ghadiali Observe Hillside Celebration.

Two airplanes, one containing Police Inspector John F. Dwyer of New York and the other Col. Dinshah Ghadiali of the new aerial service of the New York police force, arrived at Hackensack, N. J., about 4 o'clock yesterday afternoon from Roosevelt Field, L. I. Col. Ghadiali carried letters and flowers from Mayor Hylan, which he dropped. The letters were for Chief of Police Stever of Hillsdale and Theodore Haubner, President of the Hillsdale Firemen's Association.

Col. Ghadiali dropped a wreath in the park near Hillsdale roll of honor of the boys dead in the war. The planes visited the town in honor of Old Home Week." (Exhibit D-452 Id.).

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The Encyclopaedia Americana, published in 30 Volumes, in its Sixteenth Edition, on page 18, Volume 22, says **"Phototherapy,** the treatment of disease by light—Sunlight and electric light . . .". In its Bibliography, it lists thus " . . . Ghadiali, D. P. F. (Spectro-Chrome Metry Encyclopaedia—3 vols.—(1934)."

Other authors also, extended their acknowledgment of Ghadiali's work.

* * * * *

Thus, in refusing to permit the Individual Petitioner Dinshah P. Ghadiali, to present his Qualifications, Experience and Scientific Standing, to enable him to establish his credibility, the Trial Court violated his Constitutional and (or) other substantial Rights, which places this Petition within the Jurisdiction of this August Court for a Ruling, as the Secondary Evidence was the "best available," because of the Fire destroying the originals.

QUESTION 6

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to permit the Individual Defendant, Dinshah P.

Ghadiali, to demonstrate Experiments in support of his Science?

POINTS ON QUESTION 6

(6a) During the Direct Examination of Dr. David L. MacAdam, Ghadiali asked the Court: "Shall I be permitted a similar privilege of exhibiting colors on the screen, and so on?

THE COURT—Yes.

MR. GHADIALI—The trouble is that my laboratory is 30 miles away.

THE COURT—Well . . .

MR. RICHMAN—Doctor MacAdams is about 400.

MR. GHADIALI—It is difficult for me to transport all the equipment to the court room.

THE COURT—Of course that would be unfortunate. (Tr. B-590).

(6b) In the Recross Examination of Cyrus Dinshah Ghadiali, the Individual Petitioner Ghadiali addressed the Court:—

MR. GHADIALI—I am not going to take the time of the honorable Court at this time. I will go on the stand and show this by demonstration when the time comes. The only thing is that I will have to request that the honorable Court will come into my laboratory to see the experimental demonstration and I will demonstrate it.

THE COURT—You mean the Sympathometer?

MR. GHADIALI—Not only the Sympathometer. It is a big laboratory and there are many expensive materials to be demonstrated. I can't bring everything here. I ask for your kind consideration.

THE COURT—We will meet this when the time comes. (Tr. C-935).

(6c) When Individual Petitioner was on the Stand, in his own Defense, he spoke and made notations of the various Scientific Demonstrations he was intending to

make, in support of the statements on the Label and in the Labeling.

Said he: "Now, on the physical level there are four ethers which are demonstrable. I mark here in demonstration four ethers."

MR. RICHMAN—What is that?

THE COURT—He is making a note for himself that he intends to demonstrate four ethers.

MR. RICHMAN—Do we have to have all this high school chemistry and physics? Can't we get down to this machine over here?

MR. GHADIALI—That leads into the machine.

THE COURT—Proceed, Mr. Ghadiali. (Tr. L-4932).

* * *

MR. GHADIALI—Now, these Magdeburg Hemispheres . . . That experiment may be demonstrated. (Tr. L-4937).

* * *

MR. GHADIALI—I am marking here the experiment of octaves of music. (Tr. L-4942).

* * *

MR. RICHMAN—We will concede that he can do them; anybody can do them.

MR. GHADIALI—There you are. He may know everything, but the others don't.

THE COURT—When the experiments are offered we will discuss the objections of the Government to the experiments. (Tr. L-4944-4945).

* * *

MR. GHADIALI—Then comes another emanation called radium emanation, X-rays and radium. That is for future demonstration. (Tr. L-4951).

* * *

MR. GHADIALI—Then comes the last known energy known to the scientists, called magnetism . . . There

are certain things about it which we will see experimentally. (Tr. L-4951-4952).

* * *

MR. GHADIALI—It was Bunsen and Kirchhoff who found, and those experiments will be shown . . . You will see it with your own eyes when we disintegrate the different elements of the world. (Tr. L-4968-4969).

* * *

MR. GHADIALI— . . . there are certain colors which represent certain chemical elements, and that is now coming that these colors stand for certain chemical elements in a certain position in the spectrum, and these are the ones which make for our body. It will be demonstrated experimentally to you. (Tr. L-4993).

* * *

MR. GHADIALI— . . . the same red must be of so many degrees that with the blue it would produce a scarlet wave. These experiments will be shown, that is if I am given the opportunity to show. I hope you understand the principle why it is called attuned color waves, meaning matched to certain colors. There is the magenta. The red and the violet combined produce that magenta color. If thrown on the screen a red and a violet will produce a beautiful magenta color, and if they are superimposed this way on the screen you can see the red on one side, the violet on the other and the compound wave of magenta coming out. That is the reason why they are called attuned color waves. (Tr. L-5006).

* * *

MR. GHADIALI— . . . whenever a chemical element is burned or disintegrated and its atomic structure broken or destroyed, as it were, from its original shape or position, immediately it shows an emission of a certain color light in the Spectroscope and you see the number of these parts of different chemical elements, and every one of these will be demonstrated to you experimentally by producing in

your presence those Spectroscopical lines. (Tr. L-5009).

* * *

MR. GHADIALI—"Acting upon the data available, I made numerous experiments and finally came to the firm conclusion that all matter emitted Rays," because disintegration means Rays, and I will demonstrate that, rays. (Tr. L-5018).

* * *

MR. GHADIALI—"Before we can go into further details, of the Metaphysical side of life and can thoroughly comprehend how Light acts upon the Human Body and how I accomplished this scheme of Automatic Precision, it is incumbent upon us to study what others did in the line of research to prove that even common minerals can be made to phosphoresce, in High Vacua by certain Rays." This experiment is demonstrable. (Tr. L-5029).

* * *

MR. GHADIALI—Then came the idea of William Crookes' tubes. Some of his tubes will be produced here for experimental demonstration in high vacuum . . . (Tr. L-5032).

* * *

MR. GHADIALI—"The Alpha Ray from the Atomic Disintegration of Radium is actually Helium Gas." I can show that right here when the time comes, if I am permitted to do so. (Tr. L-5168).

* * *

MR. GHADIALI—What is known as color I shall define after I am through with this and show to you experimentally. (Tr. L-5383).

* * *

(6d) MR. GHADIALI—Now we come to 219 page, Chapter 24, "Razing Old Temples." It says, "The True Triad of Primary Colors, used by me in Spectro-Chrome Metry, is Red, Green and Violet." The truth of

that will be demonstrated also by experiment. (Tr. L-4979-4980).

* * *

MR. GHADIALI—Here is a combination of the violet and the red. Now, if you see through the spectroscope, you will find the bright line on this side near the left-hand corner of the entire color spectrum is wiped out. Please, sir.

THE COURT—This jury is not skilled, I am afraid, in the use of this instrument as some experts would be. I think you should give your testimony and that is about all that could be accomplished.

MR. GHADIALI—Somebody should see that there is a line there, as I stated it.

THE COURT—You have testified to it.

MR. RICHMAN—There may be a line there but so far as we are concerned, it proves nothing.

MR. GHADIALI—The very presence of the line—what does this line in certain spectral position indicate?

MR. RICHMAN—I object. He is not qualified to testify.

THE COURT—Let him testify. What does it indicate to you?

MR. GHADIALI—It indicates that that part of the spectrum has a peculiar potency or chemical which is represented in this position.

THE COURT—What line did you find on examination of this combination of color slides?

MR. GHADIALI—On the left of the hydrogen line.

THE COURT—What does that signify to you?

MR. GHADIALI—That represents to me potassium, lithium, rubidium, and strontium.

THE COURT—What do these elements reflect in the matter of color to you?

MR. GHADIALI—They reflect magenta color. Would the counsel care to see it?

THE COURT—I don't think he is any more skilled than anyone else.

MR. GHADIALI—I don't think he is any more skilled, but I think that courtesy is due him. Would the honorable Court like to see it?

THE COURT—I have no skill with this apparatus. You have testified it.

MR. GHADIALI—Let the foreman of the jury see through there.

THE COURT—No, I think that is not necessary. (Tr. M-5644-5645).

ARGUMENTS ON POINTS OF QUESTION 6

(6a), (6b) The Laboratory of Dr. David L. MacAdam may be 400 miles away, but, all he brought for demonstration was what he called a "Color Patch," to throw Colors on a Screen. (Tr. B-592). In the matter of the Petitioner Ghadiali, his Science needed demonstration with a large number of special Apparati, which when dismantled for transportation, would take days to reassemble for demonstration. Ghadiali endeavored to introduce in Evidence, in support of this contention, a Photogram of "some of the instruments needed to teach my class work," but, the Court ruled even that out. (Tr. N-5957—D-516 in Identification).

(6c) It was plain from what occurred, that Ghadiali intended from the beginning, to prove the truth of the matters contained in his Labeling, by actual, experimental demonstration. The Objection of the Prosecutor about "this high school chemistry and physics" was untenable on the face of it, because, it was quite possible, that some members of the Jury might not be familiar with such subjects. Spectro-Chrome, as is repeatedly stated by the Originator, in open language, is not a mere "Device," but

is a Science, as the Government Exhibits themselves clearly show:—

3. Spectro-Chrome is not a 'Lamp' but an original Science." (G-26 in Ev., page 8).

"Spectro-Chrome is NOT a Lamp; it is a System, a new, original and unique Science." (G-33 in Ev., page 80).

"3. Spectro-Chrome, though apparently just an Equipment with an Electric Bulb and Five Slides of certain kinds of "Colored Glass,' is not merely that; it is an original and radical System of Superscientific Healing, which in most respects upsets all prior conceptions, not only of Physics and the application of Physical Laws, but, revolutionizes most conceptions about the nature of disorders and their removal." (G-34 in Ev., pages 19-20).

The Experiments enumerated, were mentioned in G-34 in Evidence and Ghadiali had a right to prove the veracity of this original Science in a manner, which he thought was the best, for the comprehension of a Jury of Laypersons. From his constant remarks about those Demonstrations, both the Court and the Prosecutor were fully aware of his intentions. Later, the Honorable Court ruled, that there was "no reason to comply with" the request of the Defendant, about the Jury visiting the Laboratory. Said the Court: "because you asked me for a very unusual thing, namely, for a jury to leave the court room and go miles away to a laboratory that you had constructed. That is a very unusual and unconventional request." (Tr. L-5441). In as much as the intentions of Ghadiali in such direction, were openly placed before the Court, from the commencement, such ruling at a late period acted as a severe setback to the Defense. Transporting an entire Experimental And Research Laboratory, to an equally distant Court Room, would be more unusual, more unconventional and much more impracticable.

(6d) As the Honorable Court had promised defi-

nitely, that Ghadiali would be permitted privileges of Demonstration, as were granted to Dr. David L. MacAdam (Tr. B-590) and as the request about the Jury visiting the Petitioner's Laboratory was ruled out, Ghadiali endeavored to demonstrate relevant phases of the Defense right in Court. His surprise may well be conceived, when the Judge told in open terms, that neither the Jury nor the Prosecutor nor the Court was "skilled" in the use of the Instrument, which in this instance was a Direct Vision Spectroscope. The only "Skill" necessary in the use of that Instrument, for the particular Experiment, was just peeking into a Tube fitted with Glass Lenses, like a Telescope. As the Government contended that the Magenta produced by the Device of the Petitioners was "a very dark particle, no color at all" (Tr. M-5643), the showing of the bright Magenta Color was an essential factor in the Defense. When Ghadiali pressed the point to "Let the foreman of the jury see through there," the Judge stopped him from giving the Demonstration as "not necessary."

SUPPORTING ARGUMENT ON QUESTION 6

It is conceded by the Petitioners, that the regulation of the conduct of a Trial, is within the discretion of the Judge. Of course, such discretion may not be abused, to the detriment of a Party to the Trial. In the present instance, the intentions of the Petitioners about the Experimental Demonstrations, were clearly voiced by them and the Court had in no way enunciated any opinion contrary to such purpose. Depending on the Court's silence, the Petitioners carried their explanations to the point where further elucidation of the Science necessitated such Experimental Demonstrations. The surprise and discomfiture of the Individual Petitioner, then testifying for self and Co:Petitioner, when the Judge pronounced the want of "skill" of the Court, the Prosecutor and the

Jury, may very well be surmised! The Law gives an Accused "a Jury of his Peers", which in this instance, was declared by the Court itself as being too unskilled for the task imposed upon them to adjudge. That prevention of the Experimental Demonstrations and declaration of the unskillfulness of the Court, the Prosecutor and the Jury was an open admission of the miscarriage of Justice and a serious Violation of the Constitutional and (or) other substantial Rights of the Petitioners, placing this Question for the Ruling of this Supreme Court.

QUESTION 7

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in refusing to charge the Jury, as duly requested by the Petitioners?

POINTS ON QUESTION 7

(7a) In the "DEFENDANTS' REQUESTS TO CHARGE", the Petitioners requested as follows:—

"12. That in considering expert testimony, the jury should bear in mind that honest differences of opinion exist among practitioners of diverse systems of healing and that such opinions tend to be biased." (Tr. N-6353). The Court, however, said: "I will decline to charge in that language, Mr. Ghadiali." (Tr. N-6121).

(7b) In his Charge to the Jury, the Court stated:—

THE COURT—You are further instructed that deception may result from the use of statements not technically false or which may be literally true. (Tr. N-6275).

(7c) During the Charge to the Jury, Ghadiali made a suggestion to the Judge, at Side Bar:—

MR. GHADIALI—Would it be in order for you to ask the jury, in case they decide to bring in a verdict of

guilty, to specify what parts they found misleading?

THE COURT—No. That would not be in order. (Tr. N-6313-6314).

ARGUMENT ON POINTS OF QUESTION 7

(7a) While the Petitioners may concede, that those Doctors may be correct in their own views, in the practice of their own System Of Healing, they would necessarily come to Court with a mind prejudiced against other Systems, not acceptable or palatable to them, as a radically competitive Opponent, especially as their affiliation was with the American Medical Association, which had been derogating Spectro-Chrome Metry and its Originator, since 1924. Papers in support were produced by the Petitioners and taken in Identification. (Exhibit D-337). "Skilled witnesses come with such a bias on their minds to support the cause in which they are embarked that hardly any weight should be given to their evidence." (Tracy, 10 Cl. & F. 154, 191).

(7b) Were such interpretation be generally accepted, no writer of any matter for publication would be safe, because TRUTH can not be susceptible to double meanings. Were such interpretation to be held in Law, that clause of the Statute would become invalid. A person with high academic attainments, might write on some abstruse subject, in his scientific manner, but, to hold his writing as "false or misleading", because, some other persons wth a different training or mental quirk might interpret or misconstrue the original meaning, would tend to complicate life to an unbearable degree. The Legislators could not have such absurd view in mind. In the entire Testimony, there is no Evidence that any of the 12 persons whose Devices were mentioned in the Indictment, found anything "false or misleading" in the Label or Labeling. On the contrary, the Testimony of the Government Witnesses, whose Devices were seized, mentioned in the

Indictment and produced in Evidence in the Court, showed otherwise.

In her Cross-Examination, by Ghadiali, Mary Ruggiero, a Government Witness, stated when asked about the seizure of her Device, "I know I would have liked to have kept it." (Tr. A-168).

In his Cross-Examination, by Ghadiali, Charles W. Boese, a Government Witness, stated when asked about the seizure of his Device, "I wanted another machine." (Tr. A-246). Further, he was asked:—"Did you get another machine?"

THE WITNESS—Yes, sir. (Tr. A-246).

Being asked:—

MR. GHADIALI—What was the reason you wanted another machine? (Tr. A-247).

The Prosecutor's Objection to this question was overruled by the Court: "I will let him answer. Go ahead."

THE WITNESS—I wanted it. (Tr. A-247).

THE COURT—Yes.

THE WITNESS—Because I got such good results with it.

In her Cross Examination by Ghadiali, Emma Hellrung, a Government Witness, stated when asked about the seizure of her Device, "I didn't wait very long and I sent and got another. (Tr. A-262).

Called as a Defense Witness, in her Direct Examination by Ghadiali, she was asked:

MR. GHADIALI—Why did you want a second machine after losing the first? Madam, please describe in your own words.

THE WITNESS—Because it did so much good for my husband and my daughter and myself I thought I wanted another one. I didn't want to wait on that one to be returned. (Tr. H-2995-2996).

When called as a Defense Witness, in his Direct

Examination by Ghadiali, John Enslin was asked about the seizure:

Q—Did you get any other machine?

A—I did, yes.

Q—From where?

A—From Dinshah Spectro-Chrome Institute.

Q—Did you pay anything for that machine?

A—No. (Tr. G-2926).

In the same Direct Examination by Ghadiali, John Enslin stated when questioned, thus:

Q—What about your stiffness in the knees?

A—The arthritis—

MR. RICHMAN—I ask "arthritis" be stricken.

THE COURT—All right. He didn't ask you about the arthritis, he asked you about stiffness in the knees and the pain in the knees.

THE WITNESS—Less than 10 days I could walk the stair without supporting myself by hand, walked very freely up and down stairs, I couldn't help remark it, and my wife saw it. (Tr. G-2912).

In the Direct Examination of Edward L. Hixenbaugh by Ghadiali, as a Defense Witness, he admitted receiving another machine through his brother. (Tr. G-2884).

All those five persons, are still affiliated with the Petitioner Corporation, as Benefit Students in good standing. It is not comprehensible in human nature, that if those five persons found anything "false and misleading", that they would have cared to get another Device, for the same purpose.

(7c) The Prosecution constantly stressed and the Court agreed with the view, that to convict the Defendants, a proof of any single false or misleading statement was sufficient. In his Summation, the Prosecutor emphasized that point strongly. (Tr. N-6225). The concurrence of the Court was clearly evident, in the Charge to the Jury. (Tr. N-6300). As the Labeling included a large number

of pieces of Literature, placed in Evidence by the Government, one piece G-34 having 1200 pages, another G-22 having 100 pages and so on, the request of Ghadiali was within the bounds of reason. Were "misbranding" be dependent on a single statement being "false or misleading," the Accused has a right to know what particular statement or statements were found by the Jury to be so, in order that the misbranding may be removed and the Labeling be altered to conform to the letter of the Law in the future. Without such information, it would be impossible for any Defendants, to avoid repeating what was in fact found by the Jury, as repugnant to the Law. Surely, it could not have been the intent of the Congress, to make a habitual offender of an otherwise innocent man.

SUPPORTING ARGUMENT ON QUESTION 7

Underhill's Criminal Evidence, 4th Edition, Page 981, Section 480, states thus:—

"The judge may, and indeed should, charge the jury on the evidence. It is his duty to marshal all the evidence before the jury in such a way and with such comments as will enable them to see its relevancy and pertinency. He may state it; and a careful, logical, and impartial repetition, or an intelligent analysis of it, will invariably facilitate their labors in determining its credibility, appreciating its character and weight, and thus ascertaining the truth."

In the present instance, the Trial Court woefully neglected its bounden duty in charging the Jury as it did and refusing to charge as requested by the Petitioners. In a Trial that lasted 42 Sessions, a Jury of Laypersons, not provided with paper and writing material for taking relevant notes, as the Court does, just supposed to carry in their memory all the complications and implications of a highly scientific case, imposes on a Trial Court, heavy responsibilities. It was the duty of the Trial Court to give to the Jurors, a complete and faithful, as well as thorough

Analysis of the Issues involved, in simple, understandable language. That the Jury did not comprehend the Charge, is evident from what happened after its retirement. The Jury must have had confusion in mind about the Charge, because, some time after retiring for deliberation, they sent to the Court a message, asking for a written copy of the Charge. To this request, the Judge said: "Only fragments of my charge are in writing, and it is not the procedure to furnish the jury with a written charge." (Tr. N-6317). As the Charge of the Court to the Jury spread over 42 pages in the Transcript Of Proceedings and the Transcript Of Testimony And Evidence had 6354 pages, the Jury assuredly had a truly Herculean task before it, to reach a just Verdict. It is plain that the Constitutional and (or) other substantial Rights of the Petitioners were ignored and violated and this Honorable Supreme Court will so cognize.

QUESTION 8

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in interpreting the Verdict of the Jury and making its Judgment before imposing the Sentence?

POINTS ON QUESTION 8

(8a) In expressing his Judgment about the Accused, prior to the imposition of Sentence, the Court made certain criticisms:—

"Then, many years ago, you hit upon an idea of an alleged system of healing people." (Q-8).

(8b) "On sentence a court may look back of the indictment. Indeed, it is the duty of the court to follow the verdict of the jury where the court has no quarrel with that verdict and to attempt in so far as it is within its power to cause a cessation, once and for all, if possible of the transgression, . . . " (Q-10-11).

(8c) "The jury has found in effect that the public in this case has been exposed to danger by forces put forth by the defendants. I conceive it now to be my duty to carry out that jury verdict, . . . so as to bring to a stop the evil suggested in the verdict. There is evil in this thing . . . by some aberration of brain or mind you conceived yourself to be the creator of a small universe . . . by some form of self hypnosis you are obsessed with the idea that you have been commissioned by God to bring your claimed only true art of healing to mankind." (Q-11).

(8d) " . . . you completely failed to bring any convincing proof of the value of this system of healing except as it came from the lips of 100 or so or 150 poor souls who, . . . swore that they felt themselves relieved by the use of the mechanism. This was very unimpressive, very unimpressive. Not a single scientist from all of those who are found in this country was brought forward to testify, to the efficacy or the realism of any scientific principles which you invoked, and the court can only feel that these 112 witnesses whom you brought here, culled from the thousands who used the machine, were simply the dupes of your suggestions and highly exaggerated imagination." (Q-12).

(8e) "I will endeavor to construct the sentence against you and your company without imprisonment but so that it will be designed to effect what is the intention of the verdict of the jury of this court, namely, to bring to a complete stop the promotion of this so-called science in this country." (Q-15-16).

ARGUMENT ON POINTS OF QUESTION 8

(8a) There is nothing in the Evidence, that Spectro-Chrome Metry was just "hit upon." On the contrary, a perusal of the Literature of this new Science, clearly indicates it to be the evolution, of over 30 years of the labori-

ous and exhaustive Researches of Ghadiali. (Exhibit G-34 in Ev.).

(8b) The Court is squarely tied down by the Indictment, the same way as are the Accused. No such latitude can be granted to the Judiciary, as to "look back of the indictment." Even at that, granting that such legal deviation were permissible, the Animus of the Government Experts, would have been sufficient to warn him against any swerving from the circumference of the wording of the Indictment, to protect the Accused from any possible injustice.

(8c) The Court's assertion about the Jury having "found in effect that the public in this case has been exposed to danger by forces put forth by the defendants," is most phenomenally surprising. When it is remembered that the only fact the Jury had to find as "false or misleading," to pronounce a Verdict of "Guilty," was ONE SINGLE STATEMENT as such, that was what the Verdict meant—GUILTY. The Jury declared its Verdict as "guilty as to both defendants on all twelve counts in the indictment." (Tr. N-6319). Further than that, the Verdict did not go. It is inconceivable, how the Court interpreted that Verdict as a specific Mandate to do what it subsequently did. It was just a usual form of pronouncement of its opinion, that the Device was "misbranded," which may mean anything from having a part of the Label inconspicuous or otherwise, that there was one statement false or misleading or even that every word in the Labeling was "contrary to the form of the statute." The interpretation about the Verdict, made by the Court, was a product of the Judge's own mind; the Jury never uttered a word beyond—"GUILTY'. "There is evil in this thing" was also his Brain Child.

There is nothing in Evidence, that Ghadiali believed or asserted that he was "commissioned by God." On the

contrary, his Picture opposite the Title Page, of Volume I, of his Encyclopaedia, (G-34 in Ev.) reads what his true mission always has been—"Humble Servant Of Suffering Mankind." This is further exemplified by the statement printed behind the said Picture:

"DINSHAH'S PLATFORM
AS ADOPTED BY HIM SINCE 1891

The Boundless Oscillatory Ocean Of Thought Is Essentially Universal And All-pervading; It Is The Individualized Monopoly Of NO Person And Is The Common Heritage Of Humanity's Evolution; Thus, What A Development Of Unrevealed Ages Has Given Unto Me In The Form Of Knowledge In My Present Incarnation Is No Distinctive Acquisition Of Mine For My Sole Use, Benefit Or Elevation, But Is All For Thee And Is Thine Without Condition, Without Obligation, Without Expectation. I Fear No One; Only God Above And Conscience Below And From Them I Have Nothing To Fear."

(8d) The true value of any new Device, may be enunciated reliably by those who used it **according to its Technique and Instructions.** Those Witnesses, who came voluntarily by the scores, day after day, from all over the Country, at their own expense and are designated by the Honorable Court as "dupes," were the logical ones who spoke about the Device from their personal experience, many of them having suffered for years from serious ailments and were declared as hopeless cases by the orthodoxy. They were all affiliated as Students of the Petitioner Corporation and still stand by their Institute.

The Theories and Conceptions, as well as the Practical Application of Spectro-Chrome Metry, are so radically different from the accepted ideas, that for the orthodoxy to go into its thorough investigation with an open mind has been found futile. Spectro-Chrome is meeting a fate similar to what the Inventors of the Telegraph, Electric

Light, Phonograph, Telephone, Submarine, Automobile, Radio Broadcasting, Aeroplane, Talking Motion Pictures, Television and the like met in their time. After the remarks made by the Court, about its "skill" and the "skill" of the Jury as well as the Prosecutor, (Tr. M-5644-5645), it was quite apparent, that to endeavor to inject a "Scientist" after the experience of the Inventor himself on the Stand, would have served no purpose.

For a Court to state, that respectable Citizens coming voluntarily to defend their benefactor—the man who delivered them from sufferings of years, wherein the Medical Doctors could do nothing for them—were "simply the dupes of your suggestions and highly exaggerated imagination," reflects no credit on its judicial mind, especially as there was Evidence all the way through the Trial, that the man who gave such relief worked for the Cause, without any conceivable, material compensation.

(8e) There is nothing in the Jury Verdict, that would indicate that it had in mind "to bring to a complete stop the promotion of this so-called science in this country." In making such statement, the Court assumed a burden extraneous to the Statute. There is nothing in the entire Statute, which would permit an original Healing System—whether agreeable to the Government or otherwise and acceptable by its Opponents or otherwise—**to be condemned to death.** The whole Statute deals **solely** with the Label and Labeling. Even if the Jury had passed such a Verdict, it would be totally out of order, but, when it spoke only in a duosyllabic "Guilty", the Court had no reason to impute a new meaning to the Jury Verdict and pass his own burden of responsibility, to 12 others who never said a word about it.

SUPPORTING ARGUMENT ON QUESTION 8

It is clearly apparent, that in assuming powers not conferred on him, the Trial Judge made his own translation

and paraphrase of the one word—GUILTY. Guilty of what? ONE FALSE OR MISLEADING STATEMENT or perhaps many such. By multiplying and squaring in its own mind, the meaning of the Verdict, the Court evidently assumed a personal, grudging and revengeful attitude toward the Petitioners. Were the Petitioners dealing in Drugs and 12 bottles of a Drug contained therein, were found to have "false or misleading" statements on the Label, the Respondent would order in due course the change of such Label to conform with the Law. The Court would not in such case, talk about closing the entire pharmaceutical business of the Petitioners. The Court's attitude in the present instance makes no sense whatsoever. At any rate, the case runs parallel to that of Galilei Galileo, the great Astronomer and Physicist, who was ordered to be tortured for heresy by the Inquisition, because of his statements about the motion of the Solar System. He was asked to apologize openly, to escape punishment, imposed as a Sentence by 7 Cardinals. He did, but, when he rose from his knees, he stamped on the ground and exclaimed: "Eppur si muove"! (Yet it moves!) The Spectro-Chrome System, is built around the Chemical Effects found by the Originator to be produced from the Newtonian Spectrum of the Rainbow. The Rainbow is mentioned as the Token of the Covenant between God and Man (Holy Bible, Genesis, Chapter 9, Verse 13.) "I do set my bow in the cloud, and it shall be for a token of a covenant between me and the earth." Notwithstanding the negations of the learned gentlemen of the Medical Profession, about the therapeutical value of Spectro-Chrome Metry, the Originator still most respectfully states that the Label and the Labeling represents the Truths Of Higher Life and that Spectro-Chrome its Device "works"! The true Witnesses were the ones who used the Device and not those who came to down an Opponent, with a preconceived bias.

In becoming clothed with the province of the Jury and asserting views not at all included in the Verdict, the Court overstepped its judicial assignment and violated the Constitutional and (or) other substantial Rights of the Petitioners. The actions of the Court showed distinct, conceived prejudice against the Petitioners.

QUESTION 9

Were the Constitutional and (or) other substantial Rights of the Petitioners violated, by the Trial Court, in imposing the Sentence?

POINTS ON QUESTION 9

(9a) The Sentence of $12,000.00 Fine imposed on the Corporate Petitioner, was out of all proportion to the Offense charged in the Indictment.

(9b) The Sentence of $8,000.00 Fine and 3 Years in Imprisonment, imposed upon the Individual Petitioner, was out of all proportion to the Offense charged in the Indictment.

ARGUMENT ON POINTS OF QUESTION 9

(9a) The fine imposed, was the maximum on the 12 Counts. There was no diverse Offense committed, because each Count practically enumerated the same alleged transgression of the Statute. Even in imposing the Penalty, therefore, the matter should have been taken as one Offense of "Misbranding," making the Maximum Penalty as $1,000.00 Fine, for the Corporate Petitioner.

(9b) The same Argument applies to this Point, with the addition, that the Maximum Penalty should have been $1,000.00 Fine and 1 Year in Imprisonment. (United States Code, Title 21, Section 333.)

SUPPORTING ARGUMENT ON QUESTION 9

At the time of the Trial, Evidence indicated that the Petitioners had over 9,000 Spectro-Chrome Devices, issued

throughout the Country. The Respondent had libelled and seized (legally or illegally) over a hundred Devices. It becomes a matter for consideration, what would the Penalty be, if all the 9,000 Devices were brought into Court each under a separate Count of an Indictment? Under the interpretation set by the Court, the Penalty on the Corporate Petitioner would have been a Fine of $9,000,000.00 and the hapless Individual Petitioner would have to pay a Fine of $9,000,000.00 and serve a Prison Term of 9,000 Years! Under the Rules Of Legal Jurisprudence, a Penalty must fit the Crime. "Misbranding" at its worst, is in the Statute a "Misdemeanor" and to inflict upon a Researcher, an Inventor, a known Scientist, a man who lived only to work for the World, by dedicating his Life to Suffering Humanity and whose such services were in demand and were appreciated by a certain group of people, who religiously believed in the Chemical Effects producible on the Human Body by the Color Waves of the Device, was to make the Crime a Felony, far beyond the scope of the Statute. The Judge said: "There is evil in this thing." (Q-11). **That** opinion created the severe Penalty. He alluded to people using Spectro-Chrome instead of "the benefits of prompt genuine medical attention." (Q-13). The Statute states otherwise. It calls a Device "misbranded," "If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended or sugggested in the labeling thereof." (U. S. Code, Title 21, Section 352, (j)). In his opening Address to the Jury, the Prosecutor said: "Now, this machine I don't say will hurt you. I say you can shine those colored lights on you all day long and it would not hurt you . . . " (Tr. A-67). Thus, the Judge's view being of **potential** danger was contrary to the Statute as well as the Government's contention.

The wrong and self-coined interpretation of the Verdict, twisted by the Court into a public danger, was uncon-

stitutional and unsupported by precedent. The Court violated the Constitutional and (or) other substantial Rights of the Petitioners, by exceeding the boundaries of the Statute and this Honorable Tribunal may review such judicial breach. The Fines and the imposed Imprisonment are repugnant to the Eighth Amendment Of The United States Constitution, which distinctly specifies that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Petitioners committed no crime calling for such maximum and heavy penalties and plead with this August Court to review the findings. The Petitioners registered exception to it in the Trial Court. (Q-19).

QUESTION 10

Were the Constitutional and (or) other substantial Rights of the Individual Petitioner violated, by the Trial Court, in the Probation Terms offered to him?

POINTS ON QUESTION 10

(10a) In dictating the Probation Terms, the Trial Court began thus: "The specific terms of the probation are that you will generally in all respects and manner directly or indirectly disassociate yourself from the promotion of Spectro-Chrome or Spectro-Chrome Metry, its teachings and literature and so forth in every form and guise under which it might be projected." Q-17).

(10b) Proceeding further, the Trial Court stated: "Some of the other conditions designed to obtain that result will be that you will dissolve the non profit corporation, Dinshah Spectro-Chrome Institute." (Q-17).

(10c) "That you will turn over all the literature to the government for destruction." (Q-17).

(10d) "That you will discontinue directly or indirectly the service of free guidance." (Q-17).

(10e) That you will discontinue "the editing of the magazine." (Q-17-18).

(10f) "That you will at all times, at all reasonable times, freely and voluntarily open your books and your records to the inspection of the proper officers of the department of the government in control of this matter." (Q-18).

ARGUMENT ON POINTS OF QUESTION 10

(10a) The Individual Petitioner, has an investment of around 58 years of his scientific life, tied to this Science for the Service of Suffering Humanity. For the 30 years of expensive and laborious research and 28 years of actual service to the sick who came under his Free Guidance, he has been receiving only a scant $10.00 for a new Enrollment of a Benefit Student. For that meager compensation —just a living wage—since its inception the Corporate Petitioner has been having complete enjoyment of all rights, privileges and interests in his numerous Patents and Trade Marks as well as several hundred of his Copyrights on his books, writings and literature. To compel the disassociation of the Scientist from his Science, means nothing short of the deprivation of all the abovementioned Equity and at the age of 74, to throw the Inventor into the streets to starve. Such a clause in a Probation, would be distinctly repugnant to our American Constitution. "To promote the progress of science and useful arts by securing for limited time to authors and inventors the exclusive rights to their respective writings and discoveries." (U. S. Constitution, Article I, Section 8, Paragraph 8). The clause in the Probation, would accomplish annihilation of the Patents, Trade Marks and Copyrights of the Inventor and Author and is beyond the scope of the Food, Drug and Cosmetics Statute.

(10b) This second condition, is totally untenable and beyond the power of the Individual Petitioner to fulfill.

The Corporate Petitioner, is a duly chartered Non-Stock, Non-Profit, Scientific, Educational, Benevolent, Fraternal, Membership, Health Corporation, under the Laws of the Sovereign State of New Jersey. (Exhibit G-1 in Ev.). Under the State Laws regulating such incorporated Organizations, there is a prescribed manner for Dissolution. Here is that Procedure:—

"Whenever in the judgment of any corporation, it shall be deemed advisable and most for the benefit of such corporation that the same should be dissolved, it shall and may be lawful for such corporation, within ten days after the adoption of a resolution to that effect by said corporation, to cause written or printed notice of the adoption of such resolution to be mailed to each and every member of said corporation, residing in the United States, and also within ten days to cause a like notice to be published in one or more newspapers published and circulated in the county wherein such corporation shall have its place of meeting, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of such members of said corporation, to be held at the usual place of meeting of said corporation, in such county, to take action upon such resolution. The meeting may be adjourned from time to time by the consent of a majority of the members present. If at any such meeting two-third of all the members present and entitled to vote therein shall vote for the dissolution, a certificate thereof, duly attested by the secretary of the corporation, shall be filed with the secretary of state, together with due proof of the compliance with the requirements aforesaid. Thereupon the Secretary of State shall issue a certificate of dissolution, whereupon the corporation shall be dissolved and its trustees shall proceed to settle up and adjust its business and affairs. Whenever all the members shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but, on filing said consent in the office of Secre-

tary of State, he shall forthwith issue a dissolution certificate." (Revised Statutes Of New Jersey, 1937. Title 15:1-20).

(10c) This clause is totally ambiguous. The Individual Petitioner owns no Literature and even if he did, which of such Literature is so ordered for destruction is not clearly specified or enumerated, because, the Jury rendered no Verdict as to which piece or part of the Label or Labeling was deemed by it to be at variance with the Statute. The arbitrary Order is a wholesale condemnation, not provided in any Statute pertaining to the relevant matter and unjustified by the provisions of our American Constitution.

(10d) "Free Guidance" given to the duly enrolled Benefit Students, is not given by the Individual Petitioner, but, is given as a Service by the Corporate Petitioner under Contract made at the time of Enrollment. (Exhibit G-27 in Ev.) Also By-Law 79, Section 1: "Benefit Students, Graduates and Fellows having the Benefit of one or more Spectro-Chrome Equipments, shall be entitled to request Free Guidance **from the Institute** for Sufferers in their Immediate Family." (Exhibit G-25 in Ev.).

(10e) By the words "editing of the magazine," the Trial Court, of course meant the Periodical "Spectro-Chrome," of which he has been the Editor since June 1922. To order him to stop editing the Periodical and through it expressing his independent and impartial views about affairs of the World, outside of those at issue in the Trial, is a flagrant Violation of the First Amendment of the United States Constitution, which says: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances." The Jury made no declaration of finding anything "false and misleading" in the Spectro-

Chrome as a magazine. The Trial Court clearly overstepped its bounds in endeavoring to muzzle the Individual Petitioner thus.

(10f) As the Individual Petitioner is affiliated with numerous activities, the terms about "open your books and records," puts him on the spot, for any refusal to permit inspection by some headstrong Officer, of books and records not pertaining to the particular Offense on which the Probation Terms are based. The Statute, U. S. Code, Title 21, Section 374 permits Factory Inspection, under certain, specified circumstances only. The Trial Court failed to protect the Individual Petitioner, by clearly specifying the "books and records" it had in mind.

SUPPORTING ARGUMENT ON QUESTION 10

The Federal Statute pertaining to "Suspension of imposition or execution of sentences and placing of defendant upon probation; power of courts; revocation or modification of probation; duties of probationer," is defined in United States Code, Title 18, Section 724, thus:—

"The courts of the United States having original jurisdiction of criminal actions, except in the District of Columbia, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant, will be subserved thereby, shall have power, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon probation for such period and upon such terms and conditions as they may deem best; or the court may impose a fine and may also place the defendant upon probation in the manner aforesaid. The court may revoke or modify any condition of probation, or may change the period of probation. The period of probation, together with any extension thereof, shall not exceed five years."

While in it, full power is bestowed on the Court, a serious burden and responsibility also is placed on it, to look to the interests of **both Parties** to the Cause. The Judge has to watch not only "the best interests of the public," but, also those of the Defendant involved. In stripping the Individual Petitioner, of all his Equity and fruits of his scientific labors, the Trial Court could not be held to have served "the best interests of the defendant." In ordering the Individual Petitioner, to "dissolve the non-profit corporation," the Court was telling him to overstep his own authority and power as President, under the Laws of the State Of New Jersey. Were he to obey that Order, he would be performing a criminal act and be punishable on complaint of any of the 2,000 members of the Corporation and be amenable to the State Laws. Further, it would cause a veritable Violation of the Probation itself! Surely, the good Trial Judge deserves cordial gratitude and thanks, for his kind consideration in endeavoring to serve "the best interests" of the Individual Petitioner, by offering suspension of the Sentence of Imprisonment, but, it seems he did not realize the quandary into which the prospective Probationer would be launched. Aggregately, looking to all the risks involved in accepting such untenable Probation Terms, which would mean his destruction, it would be beneficial for him to go to Prison or request the permission of the Court to leave the United States and return to Bombay, India, with his entire family. Such move will satisfy all concerned and should the Government so believe, be to "the best interests of the public."

The entire Probation Terms can not be fulfilled without reasonable modification, making them humanly possible. There is a great risk involved in the Individual Petitioner accepting those Terms as they are. In issuing a Warning as to what he might do, should he think the Probation Terms were in any manner violated, the Trial Judge emphatically threatened thus:

"I shall not hesitate to call up the three years that shall hang over you like a cloud and you will observe that in the last four counts of the indictment I have reserved for myself the possibility of even increasing those years. If we can come to an obliteration fully and completely of what has been exposed here as a danger to the American public you and I will have no difficulty. If we can't you can expect to meet me again and in no merciful mood. That is all." (Q-18).

This openly shows without comment, what would be in store for the poor Probationer. Being in clash with the Medical Trust (so declared by this Honorable Supreme Court), the Probationer might be placed under some other unforeseen jeopardy by his Opponents and instead of being saved the serving of an Imprisonment Sentence of 3 years, the Honorable Trial Judge, in an unmerciful mood, might order him put away for 7 years!

The Individual Petitioner most respectfully requests this Highest Tribunal to review the manifold facets argued in this Question 10 and deem the Petition worthy of its favorable consideration.

SOME CLOSING REMARKS

The Petitioners are aware, that the Honorable Supreme Court should not be approached as another Appeal Court, but, that this Application is solely for a request of Review. However, because of the diverse character of the Questions and Points involved, the Petitioners had to touch upon matters which in other cases might be left out. During the Trial, the Petitioners were highly prejudiced by the undignified, uncalled, sometimes even bizarre antics, bordering on theatrical buffoonery, of the Assistant U. S. Attorney Grover C. Richman, purposely done to turn the Jury against them. A few are quoted below:—

MR. RICHMAN—Oh, Service to Mankind.

THE COURT—Strike it out. It is withdrawn. Don't

do it again, Mr. Richman, please. (Tr. A-417-418).

*

MR. RICHMAN—I knew Mr. Ghadiali would get in the jury box sooner or later.

THE COURT— . . . That is facetious . . . Only the court is allowed to make facetious remarks. (Tr. B-611).

*

MR. RICHMAN—He is only doing that to embarrass the government.

THE COURT—Strike it out. Don't do that . . . Please don't do it again, Mr. Richman. (Tr. B-771).

*

MR. GHADIALI—This constant interruption, your Honor, is disturbing to the accused.

THE COURT—Yes, don't disturb Mr. Ghadiali. Don't do it again. (Tr. B-784).

*

MR. RICHMAN— . . . you can't tell yourself with this hocus-pocus?

MR. GHADIALI—I object to those words "hocus-pocus." The next time counsel introduces them, I will motion the Court to declare a mistrial, on the ground that I am prejudiced.

THE COURT—Mr. District Attorney, you have heard what Mr. Ghadiali said. I will have to take seriously any motion in that direction. (Tr. C-927).

*

MR. GHADIALI—Let him bide his time. Why should he interrupt this accused in his cross-examination.

THE COURT—Hereafter, Mr. District Attorney, try to control your temper. It is most annoying to everybody involved. (Tr. C-1022).

*

MR. GHADIALI—Yes. I am putting in special emphasis; the Defendant claims that the constant disturbance created by the counsel for the prosecution in spite of

the warnings of the honorable court are very distressing and annoying to his case, and he most humbly and respectfully requests the Court to ask the counsel not to make such frequent disturbances against the rulings of the honorable court.

MR. RICHMAN—May I say something?

THE COURT—I think it is unnecessary; the record will speak for itself. (Tr. D-1589).

*

MR. RICHMAN—I object because this is just a chance for Mr. Ghadiali to show off those big words.

THE COURT— . . . I wish you wouldn't make these personal characterizations of the defendant. (Tr. D-1674).

*

In Cross-Examination of George Fischer, Richman questioned him: "Are you a member of the German-American Bund?" The answer was: "No." (Tr. H-3470).

*

In Cross-Examination of Oscar Hiss, Richman questioned him: "Were you a member of the German-American Bund?" The answer was: "I never was." (Tr. I-3604). Later he was questioned: "Were you a member of the Deutsches Auslander paper?" The answer was: "I told you before, I never was a member of any society or any club at all."

*

MR. RICHMAN—Oh, oh.

THE COURT—You must not do that, Mr. District Attorney. Strike that out.

MR. GHADIALI—If he continues that, I will declare a mistrial under the court, Your Honor.

THE COURT—Yes, it is very bad. Just don't make audible remarks, Mr. District Attorney . . . (Tr. I-3795).

*

In the Cross-Examination of Eleanor C. Luedtke,

Richman asked: "Do you remember when you took the stand you gave the Nazi salute?

THE WITNESS—I am not a Nazi. I am an American Citizen. (Tr. J-4246).

*

In the Cross-Examination of Darius Ghadiali, Richman asked him: "Are you a fire worshipper?"

THE WITNESS—No, sir.

MR. GHADIALI—Your Honor, just a minute. Religious questions are debarred in law. In criminal evidence no religion can be discussed.

THE COURT—I don't know what . . .

MR. GHADIALI—He said are you a fire worshipper.

THE COURT—What is the purpose of it?

MR. GHADIALI—I don't know.

MR. RICHMAN—I don't know.

*

When U. S. Attorney Grover C. Richman was on the Stand, as a Defense Witness, Ghadiali questioned him: "The number of the room?"

THE WITNESS—I don't know.

MR. GHADIALI—What is the number of your personal office?

THE WITNESS—I don't know.

* * *

Such attitude was purposely taken by the Prosecutor to "Railroad" the Petitioners, because, there was no foundation laid by the Prosecutor for questions as above. The one about being a "fire worshipper", asked a son of the Individual Petitioner was especially highly prejudicial. (People vs. Copsey, 71 Cal. 548, 12 Pac. 721). (Hanley vs. Chicago City R. Co., 180 Ill. App. 397). (U. S. Const. Amend. 1) (Marshall vs. State, 219 Ala. 83, 121 So. 72, 63 A. L. R. 560). (State vs. Curtin, 5 Boyce (28 Del.) 518, 95 Atl. 232).

It is self evident, that in denying his knowledge of the

number of his own "personal office", the Prosecutor committed OPEN PERJURY. No dignified and ethical Attorney, especially one representing the Department of Justice of the August Government of The United States of America, would have dared make such denial. His conduct may well bear judicial investigation.

FINAL PRAYER

WHEREFORE, your Petitioners humbly pray, that a Writ Of Certiorari issue under the Seal of this Honorable Supreme Court, directing the United States Circuit Court Of Appeals for the Third Circuit, commanding said Court to certify and send to this Court, a full and complete Transcript of the Record and Proceedings of said Court, had in the case numbered and entitled on the Docket as Number 9352, United States Of America versus Dinshah P. Ghadiali and Dinshah Spectro-Chrome Institute, Defendants-Appellants, to the end that this case may be reviewed and determined by this Supreme Court, as provided in the Statutes of the United States and that the Judgment of the Trial Court as affirmed by the Circuit Court Of Appeals be reversed by this Supreme Court and (or) such other relief be given as this Supreme Court may in its discretion and wisdom deem proper and appropriate.

For such favorable consideration, may the Grand Architect Of The Universe, for ever shower His Benign Blessings on this Honorable Supreme Court and for what it so nobly stands:

EQUAL JUSTICE UNDER THE LAW.

Most Respectfully Submitted,

DINSHAH P. GHADIALI,
pro se et al.

Dated: Thursday, April 8, 1948
Malaga, New Jersey.

IN THE
SUPREME COURT
OF THE
UNITED STATES

October 1947 Term

Number.....

DINSHAH P. GHADIALI
and
DINSHAH SPECTRO-CHROME
INSTITUTE
Petitioners

versus

UNITED STATES OF AMERICA
Respondent

MOTION
To Dispense With
Printing Of Record

TO

The Honorable Justices of the Supreme Court of the United States.

May It Please Your Honors:

Now comes before you DINSHAH P. GHADIALI, for self and Co:Petitioner and most respectfully presents this MOTION TO DISPENSE WITH PRINTING OF RECORD, for the reasons stated below.

(a) Three years ago, just prior to the commencement of the present litigation, the entire Principal Office Building of the Petitioners, a three floor structure with thirty rooms, containing all their Records, Experimental Laboratory and valuable Apparati, as well as Living Quarters, was burnt by a disastrous Fire, creating a loss estimated at over $250,000.00. (Exhibit D-42 in Ev.).

(b) The Contents being totally uninsured, the Petitioners had to endeavor to rebuild their services to the sick, from small Donations given by their Members.

(c) A large part of the collection was spent on the Litigation, which Litigation created a volume of adverse publicity, destroying the long established reputation of the Petitioners and damaging their financial status.

(d) The Individual Petitioner having lost ALL his material belongings as well as those of his wife and seven sons, was left by the Fire in an extremely unenviable situation, from which he has not recovered.

(e) The Transcript Of Record comprises 6,354 pages, bound in 14 Volumes, plus several loose Volumes of Motions, Arguments and the like and the expenses of printing them is prohibitive in the above-stated condition of the Petitioners.

(f) The Petitioners took care to print in their Brief, attached to their Petition for Writ Of Certiorari, relevant passages from the Transcript Of Record, to avoid vexatious reference, as much of the Record contains passages from the original Text Books in Exhibit.

Your Petitioners therefore humbly pray that the Honorable Court graciously grant Dispensation about printing the Record, for which your Petitioners will for ever feel thankful.

The truth of the above statements, is certified on pain and penalty of perjury.

Most Respectfully Submitted,

DINSHAH P. GHADIALI,

pro se et al.

Dated, Thursday, April 8, 1948
Malaga, New Jersey.

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MAY 13 1948
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October 1947 Term

NUMBER 727

DINSHAH P. GHADIALI
and
DINSHAH SPECTRO-CHROME INSTITUTE
Petitioners

versus

UNITED STATES OF AMERICA
Respondent

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

DINSHAH P. GHADIALI,
Malaga, New Jersey
pro se et al.

Printed In The United States Of America

IN THE
SUPREME COURT
OF THE
UNITED STATES

October 1947 Term

NUMBER 727

DINSHAH P. GHADIALI
and
DINSHAH SPECTRO-CHROME INSTITUTE
Petitioners

versus

UNITED STATES OF AMERICA
Respondent

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

TO

The Honorable Justices of the Supreme Court of the United States:

May It Please Your Honors:

Now comes before you DINSHAH P. GHADIALI, for self and Co:Petitioner and most respectfully presents this short REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION.

The Respondent presented no argument in support of its Opposition, that would affect the grant of the WRIT OF CERTIORARI; instead it made many untruthful and evasive statements.

On Page 6 of its Brief, the Respondent mentions that "petitioners do not challenge the sufficiency of the evidence." On the contrary, the Petition for the Writ is a complete challenge to the entire mode of Trial.

Further, on Page 6, the Respondent states that "Ghadiali and his personally dominated corporation profited handsomely from the sale of their devices." This is utterly untrue. The Transcript Of Record clearly shows by the Income Tax Reports, (Defendants' Exhibits 480 a-b-c, in Evidence.) that the Royalty on his numerous Patents and Copyrights as well as life-long services, netted him a mere living wage. The Corporation was and still is under heavy debt. Furthermore, there was no "SALE", the Device being a Gift for Personal Benefit to the Affiliate of the Corporation. (Defendants' Exhibits 2, 8, 17, 20, 33, 378, 383, 402 in Evidence.)

Points of Pages 7, 8 and 9 are argued by the Petitioners in their Brief, in their Questions 2 and 3.

Points of Pages 10 and 11 are fully argued by the Petitioners, in their Questions 4 and 5. The eventual views expressed by the Trial Judge, were at variance with his first promise, that he would permit experimental demonstrations. This prejudiced the Petitioners most adversely. Question 6 of the Petitioners clearly enunciates this in its Argument.

"SOME CLOSING REMARKS" on Pages 92, 93, 94, 95, are solely a few instances of the unethical and undignified conduct of the Assistant U. S. Attorney Grover C. Richman, jr., whose OPEN PERJURY in the Trial Court, when on the Stand as a Defense Witness, the Respondent conveniently "forgot" to explain in the Opposition Brief. The Transcript Of Record is full of many more such instances. The Petitioners did not call for a Mistrial, out of respect to the Honorable Trial Judge. (Tr. C-927, Tr. I-3795).

About the untenable Probation Terms, which the Respondent asserts as "milder sanction" in its Opposition Brief at Page 13, the Petitioners draw the Honorable Supreme Court's attention to the Argument in the Petitioners' Brief, Pages 86 to 92, both inclusive.

CONCLUSION

The Petitioners repeat their humble Prayer for the gracious grant of the Writ Of Certiorari.

Most Respectfully Submitted,

DINSHAH P. GHADIALI,
pro se et al.

Dated:—Thursday, May 13, 1948
Malaga, New Jersey.

MEMORANDA

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Supreme Court

In the ~~Court of Claims~~ of the United States

OCTOBER TERM, 1947

No. 727

DINSHAH P. GHADIALI AND DINSHAH SPECTRO-CHROME INSTITUTE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (see Pet. 24-27) is reported at 165 F. 2d 957.

JURISDICTION

The judgment of the circuit court of appeals was entered February 9, 1948 (R. R83).[1] On February

[1] Each volume of the transcript of record bears a letter on its cover but not all of the volumes are paginated consecutively. The references herein are to the lettered volumes and their respective pagination.

25, 1948, Mr. Justice Burton extended petitioners' time for filing a petition for a writ of certiorari to April 9, 1948. The petition was filed April 8, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether failure to conduct an administrative hearing before initiating the prosecution, as required by Section 305 of the Federal Food, Drug and Cosmetic Act, was a jurisdictional bar to the prosecution.

2. Whether it was error to receive testimony concerning the curative power of Spectro-Chrome devices other than the specific ones involved in the indictment.

3. Whether members of the medical profession were qualified to testify concerning the alleged curative powers of the device.

4. Whether evidence of good faith and pure motive was improperly excluded from the trial.

5. Whether the trial judge unnecessarily limited petitioners in establishing the qualifications, experience and scientific standing of petitioner Ghadiali.

6. Whether it was an abuse of discretion by the trial judge to refuse to take the jury to petitioners' laboratory to view experiments.

7. Whether there were any prejudicial errors in the charge to the jury.

8. Whether the prosecuting attorney was guilty of misconduct during the course of the trial.

9. Whether the terms of probation imposed on petitioner Ghadiali are invalid.

STATUTES INVOLVED

The Federal Food, Drug, and Cosmetic Act of June 25, 1938, c. 675, 52 Stat. 1040 (21 U. S. C. 301 et seq.), provides in pertinent part:

> SEC. 201. For the purposes of this Act——
>
> * * * * * * *
>
> (m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.
>
> * * * * * * *
>
> SEC. 301. The following acts and the causing thereof are hereby prohibited:
>
> (a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.
>
> * * * * * * *
>
> SEC. 303. (a) Any person who violates any of the provisions of section 301 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has

become final such person shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both such imprisonment and fine.

* * * * * * *

SEC. 305. Before any violation of this Act is reported by the Administrator to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

SEC. 502. A drug or device shall be deemed to be misbranded—(a) If its labeling is false or misleading in any particular.

The Act of March 4, 1925, c. 521, 43 Stat. 1259 (18 U. S. C. 724), provides in part:

The courts of the United States having original jurisdiction of criminal actions, except in the District of Columbia, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant, will be subserved thereby, shall have power, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon probation for such period and upon such terms and conditions as they may deem best; or the court may impose a fine and may also place the defendant upon probation in the manner aforesaid. The court may revoke or modify any condition of probation, or

may change the period of probation. *Provided,* That the period of probation, together with any extension thereof, shall not exceed five years.

* * * * * * *

STATEMENT

On August 5, 1945, petitioners were indicted (R. R4-51) in the United States District Court for the District of New Jersey in twelve counts, each alleging that petitioners violated Section 502(a) of the Federal Food, Drug and Cosmetic Act by introducing into interstate commerce a device known as "Spectro-Chrome" which it was claimed would cure disease by exposure to colors, and which was alleged to be misbranded in that it was represented that the device could cure, mitigate, treat or prevent substantially all of the known diseases of the human race.[2] Both petitioners were convicted on all counts. The corporate petitioner was fined a total of $12,000 (R. S16). Petitioner Ghadiali was fined $1,000 on each of the first eight counts and sentenced to consecutive terms of imprisonment for one year on the first three counts. Execution of the imprisonment sentences was suspended and Ghadiali was placed on probation for five years.[3] On the

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[2] A related case involving the seizure of a "Spectro-Chrome" device was before this Court on petition for a writ of certiorari in *Olsen* v. *United States,* No. 230, October Term, 1947, certiorari denied, 332 U. S. 768.

[3] The conditions of probation include the following (R. R56-57): (1) That he disassociate himself in all respects and manner from the promotion of Spectro-Chrome or Spectro-Chrome Metry, its teachings and literature; (2) that he dissolve the Dinshah Spectro-Chrome Institute; (3) that he deliver over all of his literature to

last four counts, imposition of sentence was suspended and probation imposed. (R. S16-18, R56-57.)

Since petitioners do not challenge the sufficiency of the evidence, there is no occasion to summarize in detail the evidence which was adduced at their lengthy trial. The essential facts are set forth in the opinion of the court below (see Pet. 25-26). Suffice it to say that petitioner Ghadiali and his personally dominated corporation profited handsomely from the sale of their devices, which consisted principally of a one thousand watt electric light bulb, a water container and fan for cooling purposes, and two condensing lenses to focus the rays from the bulb which shine through colored glass slides of the commercial window pane type. The devices were sold for the cure of all diseases of mankind.

ARGUMENT

Petitioners raise numerous questions of law which, so far as we are able to understand them, present nothing of substance and do not require extended discussion.

1. Petitioners' first contention (Pet. 27-29) is that, pursuant to Section 305 of the Act, the Administrator should have accorded them an opportunity to present their views before referring the matter to the United States Attorney for prosecu-

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the Government for destruction; (4) that he discontinue, directly or indirectly, the service of free guidance; (5) that he discontinue the editing of his Spectro-Chrome magazine.

tion, and that the failure to do so forecloses the prosecution. As recently as 1943, this Court held in respect of Section 305 that the giving of such an opportunity "is not a prerequisite to prosecution." *United States* v. *Dotterweich,* 320 U. S. 277, 278-279.

2. Petitioners next contend (Pet. 29-40) that the proof exceeded the scope of the indictment. In the course of the trial, the Government called expert witnesses who had examined and used Spectro-Chrome devices of the same kind as those involved in the indictment, and they testified concerning the alleged curative powers of the devices. Petitioners urge that this testimony was improper because it did not relate to the twelve specific machines on which the charges of the indictment were based. The short answer is that evidence of what other Spectro-Chrome devices—admittedly identical in principle with the devices involved in the indictment—were capable of doing was probative on the issue whether the twelve machines in question were misbranded. It long has been recognized that proof in respect of similar machines or devices is admissible to show that the device in question was incapable of substantiating the claims made in its behalf. See *Ames* v. *Quimby,* 106 U. S. 342; *Ward* v. *Blake Manufacturing Co.,* 56 Fed. 437 (C. C. A. 8); *Waters' Patent Heater Co.* v. *Smith,* 120 Mass. 444.

Petitioners also urge that it was error to admit testimony showing that even before the twelve devices in question were shipped, other persons had used similar Spectro-Chrome devices without curative success. But evidence as to actual experiences with such devices is the most convincing proof of what they are capable or incapable of doing. Indeed, petitioners' literature which accompanied the devices abounds with case histories in which the devices supposedly effected cures. The Government's evidence established the falsity of these statements and illustrated that actual experience proved the falsity of the labeling.

3. The argument (Pet. 40-50) that the Government's expert medical witnesses should not have been permitted to testify because they were not members of the "school of healing" fostered by petitioners and therefore were not capable of evaluating the alleged curative powers of the devices has no foundation in law. While it is true that the skill of any practitioner must be judged in the light of the standards of the school to which he belongs, it does not follow that only members of petitioners' school may testify as experts. The rule is stated in *Williams* v. *Marini,* 105 Vt. 15, as follows:

> We agree that the defendant's care of this patient must be tested by what good osteopathic treatment required, and by that alone. *Wilkins, Admr.* v. *Brock,* 81 Vt. 332, 344, 70 Atl. 572. And we will assume that the case was

> such that it required expert evidence from qualified osteopaths to sustain it. This does not imply, however, that only practitioners of that school could be used as experts at the trial. Very many questions pertaining to the diagnosis, physical conditions and what they indicated, the progress of the infection and other observed facts and their significance, could be established by regular physicians; indeed, some of them, at least, could be shown by unskilled observers.

In this case, experts in the fields of diabetes, cancer, tuberculosis, arteriosclerosis, and heart disease conducted clinical investigations with Spectro-Chrome devices on persons suffering from these diseases to determine whether the claims made for the devices were true. Other doctors testified concerning their treatment of ailing persons who had been users of the devices. The witnesses were trained to diagnose and treat disease, and they were capable of determining whether the devices actually aided in the treatment of various diseases or whether their magic was confined solely to their labeling. Petitioner Ghadiali's view would mean that only he and his followers are qualified to testify concerning the asserted curative powers of the devices, and this, of course, would be iron-clad insurance against the enforcement of the Act in respect of his activities.

4. Petitioners' contention (Pet. 50-52) that they should have been permitted to adduce evidence of

their good faith is answered by the fact that motive or intent is not an element of the offenses for which they were convicted. Even if petitioners had acted in good faith they would have been guilty of the offenses in question. *United States* v. *Dotterweich*, 320 U. S. 277, 280.

5. Petitioner Ghadiali's complaint (Pet. 52-64) that he was not permitted to establish his qualifications, experience and scientific standing fails to distinguish between offers of incompetent proof and of proof which was properly admissible. Thus, petitioner's character witnesses were permitted to testify for him (R. J4277, K4852, 4854, 4855), but, on the other hand, the court excluded offers of press clippings concerning petitioner Ghadiali. Obviously, the latter were not probative evidence; they were hearsay of the plainest kind. Similarly, it is difficult to understand the relevance of tendered exhibits showing that in 1892 Ghadiali was an assistant to a mathematics professor at Wilson's College, or showing "his former position with the New York Police Reserve Air Service" (Pet. 55). It is evident that in seeking to present such exhibits petitioner Ghadiali gave scant regard to such matters as relevancy, hearsay and authenticity. We perceive nothing in petitioners' arguments which show that the trial judge erred in the exclusion of any of the items of which complaint is made.

6. Petitioners now complain (Pet. 64-73) that it was error for the trial judge not to permit the jury to view experimental demonstrations in their laboratory some thirty miles from the courtroom. But, of course, this was a matter for the discretion of the trial judge. Petitioners point to nothing which shows an abuse of discretion.

7. The trial judge properly rejected petitioners' requested instruction (see Pet. 73) suggesting that members of the medical profession held biased opinions in respect of petitioners' system of "healing," for there is no warrant for such a statement. The statement of the court that deception may result from the use of statements not technically false or which may be literally true (Pet. 73) finds support in substantially the same statements by this Court in *Donaldson* v. *Read Magazine,* No. 50, decided March 8, 1948 (slip opinion pp. 10-11), and in *United States* v. *95 Barrels of Vinegar,* 265 U. S. 438, 442. Petitioners point to no meritorious requested instructions which were improperly refused, nor do they show that they excepted to the charge as given. In the circumstances, there is no basis for challenging the charge. Rule 30, F. R. Crim. P.

8. Petitioners do not urge the point, but under the title "Some Closing Remarks" they cite (Pet. 92-96) isolated fragments of questions and comments by the Assistant United States Attorney who

prosecuted the case, evidently with the purpose of suggesting improper conduct on his part. The quotations in question have been culled out of a 42-day trial record and were made in the course of a trial which necessarily was much less formal than the usual trial, because of Ghadiali's insistence on defending himself. Suffice it to say that petitioners found none of the matters of sufficient importance to justify a motion for a mistrial. Instead, they were satisfied with the trial judge's admonitions and cautionary remarks to the jury. The case was hard fought, but not unfairly.

9. Petitioners' remaining contentions (Pet. 78-92) relate to the judgment of the trial court. Petitioner Ghadiali was sentenced to pay a fine of $1,000 on each of the first eight counts of the indictment and in addition a sentence of one year's imprisonment was imposed on each of the first three counts, the sentences to be served consecutively. Execution of the sentence to imprisonment was suspended and Ghadiali was placed on probation for five years. In addition, imposition of sentence on the last four counts of the indictment was suspended and Ghadiali was placed on probation for five years on the same terms as the probation on the first three counts.

Petitioners' basic complaint relates to the terms of probation which, as the trial judge stated (see Pet. 24), are framed "to bring to a complete stop the promotion of this so-called science in this coun-

try." The specific conditions of probation (see pp. 5-6, *supra*) require Ghadiali to stop all the activities related to the distribution of the Spectro-Chrome device for which he was convicted. Petitioners suggest that this is unwarranted, but the short answer is that the probation statute (18 U. S. C. 724), having regard for the best interests of the public, authorizes the trial judge to place the defendant on probation "upon such terms and conditions" as he may deem best. In the light of the conviction, it is plain that the trial judge properly conditioned probation on petitioner Ghadiali's not participating in such illegal activities during the period of probation. The alternative to such conditions would have been to incarcerate Ghadiali so he would be unable to carry on his illegal acts. As the beneficiary of the milder sanction, Ghadiali is hardly in a position to complain. Compare *Stone* v. *United States,* 153 F. 2d 331 (C. C. A. 9), and *United States ex rel. Greenhaus* v. *Warden,* 14 F. Supp. 366 (S. D. N. Y.), affirmed, 85 F. 2d 116 (C. C. A. 2), certiorari denied, 299 U. S. 596, where terms of probation similar to those imposed on Ghadiali were sustained.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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